TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 167.

THE PEOPLE OF THE STATE OF NEW YORK *EX REL.* ABRAHAM KOPEL, PLAINTIFF IN ERROR,

vs.

THEODORE A. BINGHAM, POLICE COMMISSIONER OF THE CITY OF NEW YORK.

IN ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

FILED AUGUST 22, 1907.

(20,834.)

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a

Court of Appeals.

PEOPLE OF THE STATE OF NEW YORK *ex Rel.* ABRAHAM KOPEL, Appellant,
against
THEODORE A. BINGHAM, Police Commissioner of the City of New York, Respondent.

Papers on Appeal.

Page, Brant & Booth, Attorneys for Appellant, 27 William Street, New York City.
William Travers Jerome, District Attorney, for Respondent.

1 *Writ of Habeas Corpus.*

The People of the State of New York to Theodore A. Bingham, Police Commissioner of the City of New York, and each and every person, or persons, officer or officers having charge or custody of the body of Abraham Kopel, Greeting:

We command you, that you have the body of Abraham Kopel, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name the said Abraham Kopel is called or charged, before the Supreme Court of the State of New York, for the County of New York, at Special Term, Part II. thereof, held at the County Court House, in the Borough of Manhattan, City of New York, on the 13th day of September, 1906, at 10.30 o'clock in the forenoon thereof, to do and receive what shall then and there be considered concerning the said Abraham Kopel, and have you then there this writ.

Witness, Hon. Victor J. Dowling, one of the Justices of said Court, the 12th day of September, one thousand nine hundred and six.

By the Clerk.

PETER J. DOOLING, *Clerk.*

HOBART S. BIRD,
Attorney for Petitioner, 120 *Broadway, N. Y. City.*

2 *Return, Read on Behalf of Respondent.*

To the Supreme Court of the State of New York and the Justice thereof holding Special Term, Part Two, in and for the County of New York:

I, the undersigned, the Police Commissioner of the City of New York, do hereby certify and make return to this Honorable Court to the annexed writ of *habeas corpus* which was heretofore served upon me commanding me that I have the body of Abraham Kopel

before the said Court, and for a return thereof I respectfully set forth and allege:

That I received the said writ on the 12th day of September, 1906, and at the time of the receipt thereof by me there was and now is in my custody the body of one Abraham Kopel, whom I believe to be the person named in the said writ.

That the said Abraham Kopel was taken into custody by me on the 11th day of September, 1906, by virtue of a certain warrant issued by His Excellency, the Governor of the State of New York, on the 30th day of July, 1906, and is now in my custody by virtue of the said warrant. That a copy of the said warrant is hereto annexed, marked Exhibit A, and made part of this return, and the original thereof I now produce and exhibit to this Honorable Court.

In obedience to the command of the said writ ,I herewith produce the body of the said Abraham Kopel before this Honorable Court and assign as the cause of his detention by me the warrant of the Governor aforesaid.

Dated New York, September 13, 1906.

THEO. A. BINGHAM,
Police Commissioner of the City of New York.

3 EXHIBIT A.

STATE OF NEW YORK,
EXECUTIVE CHAMBER.

The Governor of the State of New York to the Police Commissioner, New York City, and the sheriffs, under sheriffs, and other officers of and in the several cities and counties of this State authorized by subdivision 1 of section 827 of the Code of Criminal Procedure to execute this warrant:

It having been represented to me by the Governor of Porto Rico that Abraham Kopel stands charged in that island with having, committed therein, in the District of Aquadilla the crime of Embezzlement, which the said Governor certifies to be crime under the Laws of said Porto Rico and that the said Abraham Kopel has fled therefrom and taken refuge in the State of New York; and the said Governor of Porto Rico having, pursuant to the Constitution and laws of the United States, demanded of me that I cause the said Abraham Kopel to be arrested and delivered to Samuel C. Bothwell who is duly authorized to receive him into his custody and convey him back to the said Porto Rico; which said demand is accompanied by affidavits duly verified before a magistrate and duly certified by the said Governor of Porto Rico to be authentic and duly authenticated, and charging the said Abraham Kopel with having committed the said crime and fled from said Porto Rico and taken refuge in the State of New York;

You are hereby required to arrest and secure the said Abraham Kopel wherever he may be found within this State and thereafter and after compliance with the requirements of Section 827 of the Code of Criminal Procedure to deliver him into the custody of the

said Samuel C. Bothwell to be taken back to the said Porto
4 Rico from which he fled, pursuant to the said requisition;
and also to return this warrant and make return to the Executive Chamber, within thirty days from the date hereof, of all your proceedings had thereunder, and of all facts and circumstances relating thereto.

Given under my Hand and the Privy Seal of the State at the Capitol in the City of Albany this thirtieth day of July, in the year of our Lord one thousand nine hundred and six.

[SEAL.] (Signed) FRANK W. HIGGINS.

By the Governor:
(Signed) FRANK E. PERLEY,
Secretary to the Governor.

Demurrer, Read on Behalf of Relator.

Supreme Court, New York County.

PEOPLE *ex Rel.* ABRAHAM KOPEL
against
THEODORE A. BINGHAM, as Police Commissioner of the City of New York, Defendant.

Abraham Kopel, the relator herein, hereby demurs to the return
of the defendant Theodore A. Bingham on the ground that
5 said return is insufficient in law on the face thereof, and that
it appears upon the face thereof that the warrant by virtue of which the prisoner was detained was issued without jurisdiction.

HOBART S. BIRD,
Attorney for Relator, 120 Broadway, Manhattan Borough, New York City.

Order Dismissing Writ.

At a Special Term, Part II., of the Supreme Court, in and for the County of New York, held at the County Court House in the City and County of New York, on the 12th day of October, 1906.

Present: Hon. Charles T. Truax, Justice.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* ABRAHAM KOPEL,
Relator,
against
THEODORE A. BINGHAM, Police Commissioner of the City of New York, Defendant.

A writ of *habeas corpus* having been duly issued out of this court on the 12th day of September, 1906, in behalf of the above named relator, and directed to the above named defendant; and the said defendant having duly produced the relator before this Court in

6 obedience to the command of the said writ and having duly made return thereto; and the said relator having demurred to the said return, and thereupon the proceedings thereon having duly come on to be heard before this Court in due form of law; and the said relator having duly conceded in open court that he was the same person mentioned in the warrant issued by the Governor of the State of New York, annexed to and forming part of the return to the writ of *habeas corpus*, by virtue of which he was detained in custody, and in the requisition of the Governor of Porto Rico and in the information and affidavits accompanying the same, upon which said warrant had been issued;

Now, upon reading and filing the said writ of *habeas corpus* and the return thereto, duly made by the said defendant on the 13th day of September, 1906, and the demurrer to said return, and after hearing Alfred R. Page, Esq., of counsel, in support of said demurrer and in support of the said writ of *habeas corpus*, and Robert S. Johnstone, Esq., Deputy Assistant District Attorney of the County of New York, in opposition thereto, and due deliberation having been had thereon.

Now, on motion of William Travers Jerome, District Attorney of the County of New York, it is

Ordered, that the said demurrer be and the same hereby is overruled, and it is further

Ordered, that the said writ of *habeas corpus* be and the same hereby is dismissed and the relator remanded to the custody of the said Police Commissioner of the City of New York, with direction to the said Police Commissioner to deliver him into the custody of Saml. C. Bothwell, the agent authorized by the rendition warrant of the Governor to receive him and convey him back to Porto Rico.

Ent.

C. H. T., *J.*

I consent to the form of the foregoing order.
October 3d, 1906.

7 *Notice of Appeal.*

Supreme Court, New York County.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* ABRAHAM KOPEL, Relator,
against
THEODORE A. BINGHAM, Police Commissioner of the City of New York, Defendant.

Please take notice that the relator, Abraham Kopel, hereby appeals to the Appellate Division of the Supreme Court for the First Department from the order made by the Special Term of this Court and entered herein on the 12th day of October, 1906, overruling the demurrer to the return of the said writ and dismissing the writ, and

remanding the relator to the custody of the Police Commissioner of New York and directing his delivery to Samuel C. Bothwell to be taken back to Porto Rico, and from each and every part of said order.

Dated New York, October 12, 1906.

PAGE, BRANT & BOOTH,
Attorneys for Relator, 27 William Street, New York City.

To Hon. William Travers Jerome, District Attorney; and Peter J. Dooling, County Clerk, New York County.

8 *Affidavit of No Opinion.*

Supreme Court, New York County.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* ABRAHAM KOPEL, Relator,
vs.
THEODORE A. BINGHAM, Police Commissioner of the City of New York, Respondent.

STATE OF NEW YORK, *County of New York, ss:*

Alfred R. Page, being duly sworn, says: That he is a member of the firm of Page, Brant & Booth, attorneys for the relator herein, and has had charge of the above entitled matter; that no opinion was given in the determination of this matter at the Special Term of this Court.

ALFRED R. PAGE.

Sworn to before me this 2nd day of November, 1906.

JONAS J. HEGT,
Comm'r of Deeds, N. Y. City.

9 *Stipulation Waiving Certification.*

It is hereby stipulated that the foregoing consist of true copies of the notice of appeal, writ of *habeas corpus*, return thereto, demurrer to the return, and order dismissing the writ herein, now on file in the office of the Clerk of the County of New York, and certification thereof by the Clerk is hereby waived.

Dated New York, November —, 1906.

WILLIAM TRAVERS JEROME,
District Attorney.
PAGE, BRANT & BOOTH,
Attorneys for Relator.

Order of Affirmance by Appellate Division.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on the 8th day of February, 1907.

Present: Hon. Edward Patterson, Presiding Justice,
Hon. George L. Ingraham,
Hon. Chester B. McLaughlin,
Hon. Frank C. Laughlin,
Hon. James W. Houghton,
Justices.

PEOPLE *ex Rel.* ABRAHAM KOPEL, Appellant,
vs.
THEODORE A. BINGHAM, as Police Commissioner, &c., Respondent.

Affirmance of Order.

An appeal having been taken to this Court by the relator
10 from an order of the Supreme Court entered on the 12th day of October, 1906, and said appeal having been argued by Mr. Alfred R. Page, of counsel for the appellant, and by Mr. Robert S. Johnstone, of counsel for the respondent, and due deliberation having been had thereon, it is hereby unanimously ordered, that the order so appealed from be and the same is hereby affirmed.

Enter.

E. P., *J. S. C.*

Opinions of Appellate Division.

Supreme Court, Appellate Division, First Department, January, 1907.

Edward Patterson, P. J.
George L. Ingraham,
Chester B. McLaughlin,
Frank C. Laughlin,
James W. Houghton,
JJ.

No. 301.

PEOPLE *ex Rel.* ABRAHAM KOPEL, Appellant,
vs.
THEODORE A. BINGHAM, as Police Commissioner, Respondent.

Appeal from Order Dismissing Writ of *Habeas Corpus* and Remanding Relator into Custody.

Albert R. Page, for Appellant.

Robert Johnstone, Deputy Assistant District Attorney, for Respondent.

INGRAHAM, *J.:*

It seems to have been held by the Court of Appeals in
11 People *ex rel.* Cockran *v.* Hyatt (172 N. Y., 176) that no person can or should be extradited from one State to another

unless the case falls within the Federal Constitution or statutes, and that the power which independent nations have to surrender criminals to other nations as a matter of favor or comity is not possessed by the States. The Constitution of the United States provides (Art. 4, Sec. 2, Subdiv. 2) that "a person charged in any State with treason, felony or other crime, who shall flee from justice and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime." Under this clause of the Constitution Congress has enacted (Section 5278, U. S. Rev. Stat.) that "whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State or Territory to which such person has fled,* * * it shall be the duty of the executive authority of the State or Territory to which such person has fled to cause him to be arrested and secured * * * and to cause the fugitive to be delivered."

Section 5270 (U. S. Rev. Stat.) provides for the extradition of fugitives from justice to a foreign country. This section contains a provision that was added in 1900 (Act of June 6th) which provides that "whenever any foreign country or territory, or any part thereof, is occupied by or under the control of the United States, any person who shall violate, or who has violated, the criminal laws in force therein, by the commission of any of the following offenses;" (then follows an enumeration of the offenses) "and shall depart or flee, or who has departed or fled, from justice therein to the United States, any Territory thereof or to the District of Columbia, shall, when found therein, be liable to arrest and detention by the authorities of the United States, and, on the written request or
12 requisition of the military governor or other chief executive officer in control of such foreign country or Territory, shall be returned and surrendered as hereinafter provided to such authorities for trial and under the laws in force in the place where such offense was committed. * * * Provided further, that such proceedings shall be had before a judge of the courts of the United States only, who shall hold such person on evidence establishing probable cause that he is guilty of the offense charged. * * * If so held such person shall be returned and surrendered to the authorities in control of such foreign country or territory on the order of the Secretary of State of the United States." It was further proprovided that the provisions of §§ 5270-5277 (U. S. Rev. Stat.), as far as applicable, shall govern proceedings authorized by this proviso. These provisions all relate to the surrender of a fugitive from justice by the Secretary of State to the government of a foreign country, and have no relation to the surrender of fugitives from justice from one portion of the United States to another.

Section 5278 (U. S. Rev. Stat.) then provides that "whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State or Territory to which such person has fled. * * * it shall be the duty of the executive authority of the State or Territory to which such person has fled to cause him to be arrested and secured,

* * * and to cause the fugitive to be delivered to such agent when he shall appear." This provision of the Revised Statutes was originally passed on February 12, 1793, and it seems to have been in force from that time to the present.

By Section 827 of the Code of Criminal Procedure it is provided that "it shall be the duty of the Governor, in all cases where by virtue of a requisition made upon him by the Governor of another State or Territory, any citizen, inhabitant or temporary resident of this State is to be arrested as a fugitive from justice * * *
13 to issue and transmit a warrant for such purpose to the Sheriff of the proper county * * * (except in the City and County of New York, where such warrant shall only be issued to the superintendent or any inspector of police) Before any officer to whom such warrant shall be directed or intrusted shall deliver the person arrested into the custody of the agent or agents named in the warrant of the Governor of this State, such officer must, unless the same be waived, as hereinafter stated, take the prisoner or prisoners before a Judge of the Supreme Court or a County Judge, who shall, in open court, if in session, otherwise at Chambers, inform the prisoner or prisoners of the cause of his or their arrest," and that he or they may have a writ of *habeas corpus* upon filing an affidavit to the effect that he or they are not the person or persons mentioned in said requisition.

The question presented in this case would therefore seem to be whether Porto Rico is a State or Territory within Section 5278 (U. S. Rev. Stat.), or a foreign country or territory occupied by or under the control of the United States. In the latter case the extradition must be under the provisions of Section 5270 (U. S. Rev. Stat.); while if Porto Rico is a Territory of the United States the relator may be extradited under Section 827 of the Code of Criminal Procedure, to which attention has been called.

The proviso added to Section 5270 (U. S. Rev. Stat.), by the Act of June 6, 1900, was construed in Neely *v.* Henkel (180 U. S., 109). That case presented the question of the apprehension of a fugitive from justice from the Island of Cuba, and it was held that Cuba was, at the time this decision was rendered, occupied by and under the control of the United States, of which the Court would take judicial notice. Attention was then called to the treaty of peace between the United States and Spain, and it was held that under this treaty and the acts of the military authorities of the United States under it, that the Island of Cuba was foreign terri-
14 tory within the meaning of this amendment to Section 5270 (U. S. Rev. Stat.), and could not be regarded in any constitutional, legal or international sense, part of the United States. The Court there said: "It is true that as between Spain and the United States—indeed, as between the United States and all foreign nations—Cuba, upon the cessation of hostilities with Spain and after the Treaty of Paris was to be treated as if it were conquered territory. But as between the United States and Cuba, that island is territory held in trust for the inhabitants of Cuba, to whom it rightfully belongs and to whose exclusive control it will be surrendered when

a stable government shall have been established by their voluntary action. * * * Indeed, the Treaty of Paris contemplated only a temporary occupancy and control of Cuba by the United States."

It seems from the whole discussion in this case that the provision of Section 5270 (U. S. Rev. Stat.) would not have been applicable if Cuba had become territorially a part of the United States; that the proviso of that section requiring the surrender of public officers, employees or depositaries fleeing to the United States after having committed in a foreign country or any part thereof occupied by or under the control of the United States the crime of embezzlement or criminal malversation of the public funds, had special application to Cuba in its present relation to this country.

By the Treaty of Paris, however, the Island of Porto Rico was expressly ceded to the United States. The Ninth Article of that treaty provided that "the civil rights and political status of the native inhabitants of the territory hereby ceded to the United States (Porto Rico) shall be determined by Congress." By Section 1977 of the U. S. Revised Statutes it is provided that "all persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to
15 sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses and exactions of every kind, and to no other."

After the Treaty of Paris Congress passed an act for the government of Porto Rico (Chapter 191, Laws of 1900). This act was entitled, "An Act to protect all citizens in their civil and legal rights," and created all the inhabitants continuing to reside in Porto Rico except such as elected to preserve their allegiance to the Crown of Spain, together with such citizens of the United States as resided in Porto Rico a body politic under the name of the People of Porto Rico to whom governmental powers were thereinafter conferred. It was then provided that all the statutory laws of the United States except the Internal Revenue Laws should have the same force and effect in Porto Rico as in the United States, and provision was made for the appointment of a Governor by the President, and for a Legislative Assembly, one branch of which was to be elected by the qualified voters of Porto Rico. All laws enacted by this Legislative Assembly were to be reported to Congress, who should have power and authority to annual the same. A complete judiciary system was established with provision for writs of error to the Supreme Court of the United States in the same manner, under the same regulations and in the same cases as from Territories of the United States.

By the operation of the Treaty of Paris the Island of Porto Rico, therefore, became territorially a part of the United States. It was ceded to the United States by that treaty and since that time has been the property of the United States the same as the Northwest Territory became the property of the United States; as the Louisiana territory became the property of the United States by
16 the Treaty with France in 1803; and the territory acquired by the Treaty of Peace Between the United States and

Mexico. Upon the organization by the United States of the various governments of each of these territories they became territorial governments under the control of the United States and under the express provisions of Article 4, Section 3, Subdivision 2 of the Federal Constitution, which provides that "the congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States." Congress had the power to prescribe such government for these various territorial possessions as seemed to it appropriate to insure good government. When, therefore, Porto Rico was acquired by the government of the United States by virtue of the concession contained in the Treaty of Paris, the sovereignty of that island vested in the United States, and Congress had power to provide for its government in such manner as it was conceived would best subserve the principles of the Constitution. When it created such a government under the authority of the United States, providing for the appointment of a governor by the President and Senate; a legislative body to exercise the legislative powers; and a judiciary to exercise the judicial powers within the territorial limits of the island, I can see no reason why that island did not then become a territory of the United States with the same effect as other territories acquired by the United States and divided into separate territories governed as provided by law. It seems to me that there is no fundamental distinction between a territory organized by the United States from the property acquired from France or Mexico, and the territorial government organized by the United States from property acquired by the United States from Spain by the Treaty of Paris. When the United States organized a government for the Island of Porto Rico with executive, legislative and judicial powers, a territory was created subject
17 to the jurisdiction of the United States and thus came directly within the provisions of the laws of the United States relating to territories. Porto Rico has ceased to be a "foreign country or territory" and has become a part of the territory of the United States, and when the United States organized a government under its jurisdiction and control for that island it then became within the meaning of all provisions of law regulating territories, a territory of the United States.

I think this status of the government of Porto Rico is fairly recognized by the Supreme Court of the United States in De Lima *v.* Bidwell (182 U. S., 1). In the opinion in that case there is a statement of the various territories that have been acquired by the United States and the action of the government in taking possession of and governing these territories until regular Territorial governments were established by Congress. After considering the effect of the Treaty of Paris the Court said (p. 196): "It follows from this that by the ratification of the Treaty of Paris the island became territory of the United States although not an organized Territory in the technical sense of the word." That "whatever be the source of this power, its uninterrupted exercise by Congress for a century, and the repeated declarations of this Court, have settled the law that the right to acquire territory involves the right to govern and dispose of it.

* * * Under this power Congress may deal with territory acquired by treaty; may administer its government as it does that of the District of Columbia; it may organize a local territorial government; it may admit it as a State upon an equality with other States; it may sell its public lands to individual citizens or may denote them as homesteads to actual settlers. In short, when once acquired by treaty, it belongs to the United States, and is subject to the disposition of Congress." And the conclusion of the Court was that Porto Rico was not a foreign country but a Territory of the
18 United States. Although there was in that case a strong dissent, it was based upon the position taken that Porto Rico occupied a relation to the United States between that of being a foreign country absolutely and that of being a domestic Territory absolutely, and because of that relation its product was subject to the duties imposed by the Dingley Act. The whole discussion turned upon the condition of Porto Rico between the time of the ratification of the Treaty of Paris and the legislation by Congress establishing a government for that Island.

When Congress established a civil government for the Island of Porto Rico under the control and authority of the United States, a territorial government was established under which Porto Rico became an organized Territory of the United States It ceased to be a foreign country or territory upon the ratification of the Treaty of Paris between the United States and Spain. It became an organized Territory of the United States when the United States established a form of government under which the Island was to be governed subject to the jurisdiction of Congress and officers appointed in pursuance of law establishing a territorial government.

I think, therefore, it became a Territory within the provisions of Section 5278 (U. S. Rev. Stat.), and it follows that the order appealed from should be affirmed.

McLaughlin and Laughlin, JJ., concur.

19 *Opinion.*

Supreme Court, Appellate Division, First Department, January, 1907.

Edward Patterson, P. J.
George Ingraham,
Chester B. McLaughlin,
Frank C. Laughlin,
James W. Houghton,
JJ.

No. 301.

PEOPLE *ex Rel.* ABRAHAM KOPEL, Appellant,
vs.
THEODORE A. BINGHAM, as Police Commissioner, Respondent.

PATTERSON, *P. J.:*

I concur in the views as expressed by Mr. Justice Ingraham, concerning the status of the Island of Porto Rico as a territory of the

United States; and while it is not expressly decided in De Lima *v.* Bidwell (182 U. S., 1) and Downes *v.* Bidwell (182 U. S., 244), yet it seems to have been assumed throughout the opinions written by the learned Justices of the Supreme Court of the United States in those cases, that such Island is a territory, although not a part of the United States within the revenue clause of the Constitution. I am inclined, however, to the view that it is not necessary to determine on the appeal now pending before us, whether the Island of Porto Rico is an incorporated territory. It is an organized territory with a government established by the Congress, by a law which it
20 was authorized to enact. "Until Congress shall see fit to incorporate territory ceded by treaty, into the United States, we regard it as settled by that decision (Downes *v.* Bidwell, 182 U. S., 244) that the territory is to be governed under the power existing in Congress to make laws for such territories," &c. (Dorr *vs.* The United States, 195 U. S., 138-143.)

It seems to me that the authority of the Congress to legislate for the return of fugitives from justice to the authorities of Porto Rico is to be found in the power last referred to. The question here is, whether the Governor of Porto Rico had the right to call upon the Governor of the State of New York for the surrender of the relator, and whether the duty was incumbent upon the Governor of the State of New York to comply with such a demand. The Congress of the United States established a complete governmental scheme for the Island of Porto Rico, which included an executive head called the Governor. By an express provision of the law creating that governmental establishment, passed April 12, 1900 (§ 17), and commonly called the Foraker Act, it is required that the Governor of Porto Rico shall at all times faithfully execute the laws, and he shall in that behalf *have all the powers of Governors of the territories of the United States* that are not locally inapplicable. By Section 5278 of the Revised Statutes of the United States, it is enacted that "Whenever the executive authority of any State or territory demands any person as a fugitive from justice of the executive authority of any State or territory to which such person has fled * * * it shall be the duty of the executive authority of the State or territory to which such person has fled, to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand or to the agent of such authority appointed to receive the fugitive and to cause the fugitive to be delivered to such agent when he shall appear." The Governor of Porto Rico
21 had the power to proceed under this section of the Revised Statutes by force of the terms of Section 17 of the Act of April 12, 1900.

It is charged against the present relator that he is the subject of a criminal prosecution by "The People of Porto Rico," and the Governor of Porto Rico, being invested by the Congress with the authority of a governor of a territory of the United States, has, in the performance of the duty and obligation resting upon him to execute the laws of the Island of Porto Rico, demanded the surrender or rendition of the relator to the proper authorities of that island. Un-

less it must be held that the provisions of Section 5278 of the Revised Statutes of the United States are locally inapplicable to the Island of Porto Rico, it seems to me that the clear authority for the demand and surrender of the relator is shown to exist by force of the Act of the Congress passed in pursuance of its power to legislate. The provisions of Section 5278 of the Revised Statutes of the United States are general and relate to all territories. They are just as applicable to one as to another. They cannot by any proper understanding of language be regarded as only locally applicable to a particular territory with a permitted particular form of organized or incorporated government.

Laughlin & Houghton, JJ., concur.

22 *Notice of Appeal.*

Supreme Court, New York County.

PEOPLE OF THE STATE OF NEW YORK *ex Rel.* ABRAHAM KOPEL, Relator-Appellant,
against
THEODORE A. BINGHAM, Police Commissioner of the City of New York, Defendant-Respondent.

Notice of Appeal.

Please take notice that the relator, Abraham Kopel, hereby appeals to the Court of Appeals of the State of New York from the order made by the Appellate Division of the Supreme Court for the First Department affirming the order made by the Special Term of this Court, and entered herein on the 12th day of October, 1906, overruling the demurrer to the return of the said writ and dismissing the writ and remanding the relator to the custody of the Police Commissioner of New York, and directing his delivery to Samuel C. Bothwell to be taken back to Porto Rico, and from each and every part of said order.

Dated New York, February 13, 1907.

PAGE, BRANT & BOOTH,
Att'ys for Appellant,
27 *William Street, New York City.*

To Hon. William Travers Jerome, District Attorney, New York County, and Peter J. Dooling, Esq., Clerk of the County of New York.

23 *Stipulation Waiving Certification.*

It is hereby stipulated that the foregoing consist of true copies of the notice of appeal, writ of *habeas corpus*, return thereto, demurrer to the return, order dismissing the writ herein, order of affirmance thereof made by the Appellate Division, First Department, now on

file in the office of the Clerk of the County of New York, the opinions by the Appellate Division and the notice of appeal from the order of affirmance to the Court of Appeals, and certification thereof by the Clerk is hereby waived.

Dated New York, March 1st, 1907.

WM. TRAVERS JEROME,
District Attorney.
PAGE, BRANT & BOOTH,
Attorneys for Relator.

24 COURT OF APPEALS, *State of New York, ss:*

Pleas in the Court of Appeals Held at the Capitol, in the City of Albany, on the 14th Day of June, in the year of Our Lord One Thousand Nine Hundred and Seven, Before the Judges of said Court.

Witness, the Hon. Edgar M. Cullen, Chief Judge presiding.

WILLIAM H. SHANKLAND, *Clerk.*

Remittitur, June 15, 1907.

Court of Appeals.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* ABRAHAM KOPEL, Appellant,
against
THEODORE A. BINGHAM, Police Commissioner of the City of New York, Respondent.

Be it remembered that on the 5th day of March, in the year of our Lord, One thousand nine hundred and seven, the relator, Abraham Kopel, the Appellant in this proceeding, came here into the Court of Appeals by Page, Brant & Booth, his attorneys, and filed in the said Court a notice of appeal and return thereto from the order of the Appellate Division of the Supreme Court in and for the first judicial department, and Theodore A. Bingham, as Police Commissioner of the City of New York, the Respondent in said proceeding, afterwards appeared in said Court of Appeals by William Travers Jerome, District Attorney, his attorney, with said notice of appeal and the return thereto filed as aforesaid, which is hereunto annexed.

25 Whereupon the said Court of Appeals having heard this cause argued by Mr. Alfred R. Page, of counsel for the Appellant, and by Mr. Robert S. Johnstone, of counsel for the Respondent, and after due deliberation had thereon it is ordered and adjudged that the order of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed, and it is also further

Ordered that the record aforesaid and the proceedings in this

Court be remitted to the said Supreme Court, there to be proceeded upon according to law.

Therefore it is considered that the said order be affirmed as aforesaid;

And hereupon as well the notice of appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid by them given in the premises, *which* is by said Court of Appeals remitted to the Supreme Court of the State of New York before the justices thereof, according to the form of the statute in such cases made and provided, to be enforced according to the law, and which record now remains in the said Supreme Court before the justices thereof, etc.

WILLIAM H. SHANKLAND,
Clerk of the Court of Appeals, State of New York.

COURT OF APPEALS, CLERK'S OFFICE.
ALBANY, *June* 15, 1907.

I hereby certify that the preceding record contains a correct transcript of the proceedings in the Court of Appeals with the papers originally filed therein attached thereto.

WILLIAM H. SHANKLAND, *Clerk.*

26 At the Special Term Part II of the Supreme Court in and for the County of New York held at the Court House thereof in the City of New York, Borough of Manhattan on the 20th day of June, in the year of our Lord One thousand nine hundred and seven.

Present: Hon. Edward E. McCall, Justice.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* ABRAHAM KOPEL,
Appellant,
against
THEODORE A. BINGHAM, Police Commissioner of the City of New York, Respondent.

Order on Remittitur.

Whereas, heretofore to wit:

On the 30th day of July, One thousand nine hundred and six, the governor of the State of New York duly issued his warrant for the arrest of the relator above named, upon a requisition duly made to him by the governor of Porto Rico, pursuant to the Constitution of the United States, and thereupon the said relator having been duly arrested under said warrant;

Whereupon, to wit, on the 12th day of September then next ensuing, a writ of *habeas corpus* was duly issued out of the Supreme Court of the State of New York, New York County, to inquire into the time and cause of the imprisonment of the relator and return and demurrer respectively, having been filed herein and said writ having duly come on to be heard and due deliberation having been had thereon, said demurrer was over-ruled and the writ dismissed

and the relator remanded to the custody of the Police Com-
27 missioner of *of* the City of New York on October 12, 1906.

And whereas, the Appellant aforesaid thereafter duly appealed from the order dismissing said writ, etc., to the Appellate Division of the Supreme Court of the State of New York for the first department.

And whereas, at a term of the Appellate Division of the said Supreme Court held in and for the first department: to wit: at the Court House thereof in the County aforesaid on the 8th of February, in the year of our Lord, One thousand nine hundred and seven, the said order of this Court was by the order of the Appellate Division in all things affirmed.

And whereas, the Appellant aforesaid thereafter duly appealed from the order of the said Appellate Division of the Court of Appeals of the State of New York.

And whereas, at a term of the said Court of Appeals held at the Capitol in the City of Albany on the 14th day of June in the year of our Lord, One thousand nine hundred and seven, the said order of the said Appellate Division was by the order of the said Court of Appeals in all things affirmed and recorded herein, and the proceedings in the said last mentioned Court upon the said appeal whereby the said order — remitted to this court, there to be proceeded upon according to law, as by the remittitur of the said Court of Appeals now on file in this Court, more fully appear*ed*.

Now, therefore, on reading and filing the said remittitur and on motion of William Travers Jerome, Esq., District Attorney, it is

Ordered that the said order of the said Court of Appeals be and the same hereby is made the order of this Court;

And it is further ordered that the said order of this court so appealed from as aforesaid and so affirmed, and the said order
28 of the Appellate Division of the Supreme Court herein be and the same hereby is directed to be enforced and carried into execution and effect.

Enter.

EDWARD E. McCALL,
Remittitur, J. S. C.

29 United States Supreme Court.

PEOPLE OF THE STATE OF NEW YORK *ex Rel.* ABRAHAM KOPEL,
Relator-Appellant,
against
THEODORE A. BINGHAM, Police Commissioner of the City of New York, Respondent.

Know all men by these presents, that we, Abraham Kopel, as principal, and Isaac Greenburg, as surety, are held and firmly bound unto Theodore A. Bingham, Police Commissioner of the City of New York, in the sum of Five hundred ($500.) Dollars, to be paid to the said obligee, his successors, representatives and assigns, to the payment of which well and truly to be made, we bind ourselves, our

heirs, executors and administrators jointly and severally by these presents. Sealed with our seals and dated this fifth day of July, A. D., 1907.

Whereas, the above-named Abraham Kopel, plaintiff in error, hath prosecuted a writ of error in the Supreme Court of the United States to reverse the final order rendered in the above-entitled matter by the Supreme Court of the State of New York on the order of the Court of Appeals in that State.

Now, therefore, the condition of this obligation is such that if the above named plaintiff in error shall prosecute his said writ of error to effect, and answer all costs of damages, if he shall fail to make good his plea, then this obligation shall be void, otherwise to remain in full force and effect.

ABRAHAM KOPEL. [L. S.]
ISAAC GREENBURG. [L. S.]

Signed, sealed and delivered in the presence of
M. NUSSBAUM.

30 UNITED STATES OF AMERICA,
Southern District of New York:

On this 5th day of July, 1907, before me personally appeared Abraham Kopel and Isaac Greenburg, to me known and known to me to be the persons described in and who executed the foregoing bond, and severally acknowledged to me that they executed the same as their own free act and deed.

[NOTARIAL SEAL.] M. NUSSBAUM,
Notary Public, County of New York.

31 United States Supreme Court.

PEOPLE OF THE STATE OF NEW YORK *ex Rel.* ABRAHAM KOPEL, Relator-Appellant,
against
THEODORE A. BINGHAM, Police Commissioner of the City of New York, Respondent.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Isaac Greenburg, being duly sworn, says: that he is a citizen of the United States and resides at 541 West 124th Street, in the City of New York.

That he is the surety on the annexed bond in the above-entitled matter, dated the 5th day of July, 1907.

That he is the secretary and treasurer of the Rowland & Marsellus Company and a stockholder therein. That he is worth more than One thousand ($1,000.) Dollars, over and above all his property exempt from levy and sale under an execution.

ISAAC GREENBURG.

Sworn to before me, this 6th day of July, 1907.

[SEAL.] WM. C. REDDY,
Notary Public, N. Y. Co.

Approved.
R. W. PECKHAM,
Asso. Jus. S. Court U. S.

32 [Endorsed:] U. S. Supreme Court. The People of the State of New York *ex rel.* Abraham Kopel, Relator, Appellant, *vs.* Theodore A. Bingham, Police Commissioner of the City of New York, Respondent. Copy. Bond on Writ of Error. Page, Brant & Booth, Attorneys for Appellant, Lord's Court Building, 27 William Street, Borough of Manhattan, City of New York, N. Y.

33 Supreme Court of the United States.

PEOPLE OF THE STATE OF NEW YORK *ex Rel.* ABRAHAM KOPEL, Relator-Appellant,
against
THEODORE A. BINGHAM, Police Commissioner of the City of New York, Respondent.

To the Honorable the Supreme Court of the United States:

The petition of Abraham Kopel, the above-named relator and appellant, respectfully shows:

That he is a citizen of the United States of America, and that on the 20th day of June, 1907, in the above-entitled matter, a final order was rendered against the petitioner by the Supreme Court of the State of New York upon a decision of the Court of Appeals of the State of New York, the latter being the highest court of law or equity in the said State of New York, wherein it was adjudged that the order theretofore made therein on the 12th day of October, 1906, overruling the demurrer to the return to the writ of *habeas corpus* therein and dismissing the said writ and remanding the relator to the custody of the respondent, the police commissioner of the City of New York, with direction to the said Police Commissioner to deliver the relator into the custody of the agent authorized by the rendition warrant of the Governor to receive him and convey him back to Porto Rico. That in and by such order rendered in pursuance of the decision of the said Court of Appeals, it was adjudged contrary to the fifth article of amendment of the Constitution of the United States, that under and by virtue of sections 5278 and 5279 of the United States Revised Statutes and the Act of Congress of April 12th, 1900, Chapter 191, (31 Statutes at Large, U. S., page 77),

34 that the Governor of Porto Rico had power and authority to make a requisition upon the Governor of the State of New York for the arrest and surrender of Abraham Kopel, the relator-appellant, as a fugitive criminal from Porto Rico, and that the Governor of the State of New York had power and authority to honor such a requisition and to issue his rendition warrant for the arrest and sur-

render of said Abraham Kopel, all of which appears in the record upon the final order of the said Court of Appeals, and the order on the remittitur of said Supreme Court of the State of New York entered thereupon, affirming the order of October 12th, 1906, whereby a manifest error has happened to the great damage of your petitioner.

Wherefore your petitioner prays for the allowance of a writ of error from the Supreme Court of the United States to the Supreme Court of the State of New York and the judges thereof, to the end that the record in said matter may be removed into the Supreme Court of the United States, and the error complained of by your petitioner may be examined and corrected, and said judgment reversed and your petitioner discharged. And your petitioner will ever pray.

ABRAHAM KOPEL.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Abraham Kopel, being duly sworn, says: that he is the petitioner above-named; that the foregoing petition is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

ABRAHAM KOPEL.

Sworn to before me, this 5th day of July, 1907.

M. NUSSBAUM,
Notary Public.

35 [Endorsed:] U. S. Supreme Court. People of the State of New York, *ex rel.* Abraham Kopel, Relator-Appellant, against Theodore A. Bingham, Police Commissioner of the City of New York, Respondent. Petition for writ of error. Page, Brant & Booth, Attorneys for Appellant, Lord's Court Building, 27 William Street, Borough of Manhattan, City of New York, N. Y.

36 Supreme Court of the State of New York.

PEOPLE OF THE STATE OF NEW YORK *ex Rel.* ABRAHAM KOPEL, Relator-Appellant,
against
THEODORE A. BINGHAM, Police Commissioner of the City of New York, Respondent.

Now comes the said appellant and respectfully submits that in the record, proceedings and decision of the Court of Appeals of the State of New York, and the final judgment entered thereupon in the Supreme Court of the State of New York in the above-entitled matter, there is manifest error in this, to wit:

1. That the court erred in holding that under sections 5278 and 5279 of the United States Revised Statutes and the Act of Congress of April 12th, 1900, Chapter 191, (31 Stat. at Large, 77), that the Governor of Porto Rico had power and authority to make a requisi-

tion upon the Governor of the State of New York for the arrest and surrender of Abraham Kopel, the relator-appellant, as a fugitive criminal from Porto Rico, and that the Governor of the State of New York had power and authority to honor such a requisition and to issue his rendition warrant for the arrest and surrender of said Abraham Kopel.

2. That the court erred in affirming the order overruling the demurrer to the return to the writ of *habeas corpus* and dismissing the writ of *habeas corpus* and remanding the appellant, Abraham Kopel
to the custody of the Police Commissioner of the City of New
37 York, with directions to deliver him into the custody of the
duly accredited agent for the Governor of Porto Rico, authorized to receive him and convey him back to Porto Rico, and in refusing to discharge the appellant, Abraham Kopel from custody.

3. That by reason of the order and decision of the court this petitioner was and is deprived of his liberty without due process of law in violation of the fifth article of amendment of the Constitution of the United States.

PAGE, BRANT & BOOTH,
Attorneys for Relator-Appellant,
27 William Street, New York City.

38 [Endorsed:] New York Supreme Court. People of the State of New York, *ex rel.* Abraham Kopel, Relator-Appellant, against Theodore A. Bingham, Police Com'r of the City of N. Y., Respondent. Assignment of errors. Page, Brant & Booth, Attorneys for Appellant, Lord's Court Building, 27 William Street, Borough of Manhattan, City of New York, N. Y.

39 Supreme Court of the United States.

PEOPLE OF THE STATE OF NEW YORK *ex Rel.* ABRAHAM KOPEL,
Relator-Appellant,
against
THEODORE A. BINGHAM, Police Commissioner of the City of New York, Respondent.

UNITED STATES OF AMERICA, *ss:*

To Theodore A. Bingham, Police Commissioner of the City of New York, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, within thirty days of the date hereof, pursuant to a writ of error filed in the clerk's office in the Supreme Court of the State of New York, wherein Abraham Kopel is plaintiff in error and you, defendant in error, to show cause, if any there be, why the final order rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Rufus W. Peckham, Associate Justice of the Supreme Court of the United States, this 8 day of July, in the year of our Lord, One thousand Nine hundred and Seven.

R. W. PECKHAM,
Associate Justice of the Supreme Court of the United States.

40 [Endorsed:] Supreme Court of the United States. People of the State of New York, *ex rel.* Abraham Kopel, Relator-Appellant, *vs.* Theodore A. Bingham, Police Commissioner of the City of New York, Respondent. Citation. Page, Brant & Booth, Attorneys for Appellant, Lord's Court Building, 27 William Street, Borough of Manhattan, City of New York, N. Y. Received District Attorney's Office, Jul- 11 1907. C. B. Received July 15 1907. Entered.

41 THE UNITED STATES OF AMERICA, *ss.:*

The President of the United States of America to the honorable the judges of the Supreme Court of the State of New York, Greeting:

Because in the record and proceedings as alleged in the rendition of a final order which is in the said Supreme Court of the State of New York before you, or some of you, a final order was rendered on an order of the Court of Appeals of the State of New York, being the highest court of law or equity of the said State in which a decision could be had in a matter entitled "The People of the State of New York *ex rel.* Abraham Kopel against Theodore A. Bingham, Police Commissioner of the City of New York, wherein was drawn in question under and by virtue of sections 5278 and 5279 of the Revised Statutes and the Act of Congress of April 12th, 1900, Chapter 191 (31 Stat. at Large, 77) the power and authority of the Governor of Porto Rico to make a requisition upon the Governor of the State of New York for the arrest and surrender of Abraham Kopel, the relator-appellant as a fugitive criminal from Porto Rico and the power and authority of the Governor of the State of New York to honor such a requisition and to issue his rendition warrant for the arrest and surrender of said Abraham Kopel, and wherein the decision was against the title, right, privilege and immunity specially set up and claimed under the fifth article of amendment to the Constitution of the United States, and thereby manifest error has happened to the great damage of the said Abraham Kopel, as by his petition appears and we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment
42 be therein given, that then under your seal distinctly and openly you send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within thirty days from the date hereof in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further

to be done therein to correct that error what of right and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 8 day of July, in the year of our Lord, One thousand Nine hundred and Seven.

[Seal of the Supreme Court of the United States.]

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by
R. W. PECKHAM,
Associate Justice Supreme Court U. S.

43 [Endorsed:] U. S. Supreme Court. People of the State of New York, *ex rel.* Abraham Kopel, Relator-Appellant, *vs.* Theodore A. Bingham, Police Commissioner of the City of New York, Respondent. Writ of error. Page, Brant & Booth, Attorneys for Appellant, Lord's Court Building, 27 William Street, Borough of Manhattan, City of New York, N. Y. Received District Attorney's Office, Jul- 11 1907. C. B. Received July 15 1907. Entered.

44 Supreme Court of the United States.

PEOPLE OF THE STATE OF NEW YORK *ex Rel.* ABRAHAM KOPEL,
Relator-Appellant,
against
THEODORE A. BINGHAM, Police Commissioner of the City of New York, Respondent.

The above-entitled matter coming on to be heard upon the petition of the appellant therein for a writ of error from the Supreme Court of the United States to the Supreme Court of the State of New York, and upon examination of said petition, and desiring to give the petitioner an opportunity to present in the Supreme Court of the United States the question presented in said matter,

It is ordered that a writ of error be and is hereby allowed to the Supreme Court of the State of New York from the Supreme Court of the United States, and that the bond presented by said petitioner be and the same hereby is approved.

R. W. PECKHAM.
Associate Justice Supreme Court U. S.

45 [Endorsed:] U. S. Supreme Court. People of the State of New York, *ex rel.* Abraham Kopel, Relator-Appellant, *vs.* Theodore A. Bingham, Police Commissioner of the City of New York, Respondent. Order for writ of error. Page, Brant & Booth, Attorneys for Appellant, Lord's Court Building, 27 William Street, Borough of Manhattan, City of New York, N. Y. Received District Attorney's Office, Jul- 11 1907. C. B. Received July 15 1907. Entered.

46 STATE OF NEW YORK, *County of New York:*

Clerk's office of the Supreme Court of the State of New York, for the County of New York.

I, Peter J. Dooling, Clerk of the County of New York and of the Supreme Court of the State of New York, for the said County of New York, by virtue of the annexed writ of error which was served upon me on the 15th day of July 1907 and in obedience thereto, do hereby certify that the foregoing Pages Numbered from 1 to 31 inclusive contained a true and complete transcript of the record and proceedings had in said Court in the suit mentioned in said writ of error as the same remain of record and on file in my office and that annexed hereto is the petition for the said writ of error the citation to the writ *in* error with proof of service of the same, the said writ of error served upon me.

In Testimony Whereof, I have caused the Seal of the said Court to be hereunto affixed at my office in the City and County of New York, on the 1st day of August 1907.

[New York Seal.]

PETER J. DOOLING, *Clerk.*

47 Court of Appeals.

Decided June 14, 1907.

THE PEOPLE OF THE STATE OF NEW YORK *ex Rel.* ABRAHAM KOPEL, Appellant,
against
THEODORE A. BINGHAM, Police Commissioner of the City of New York, Respondent.

Opinion.

Appeal by the relator from an order of the Appellate Division of the Supreme Court in the First Department, entered on October 12, 1906, affirming an order made at a Special Term of the Supreme Court in New York County, overruling a demurrer to the return of a writ of *habeas corpus* and dismissing the writ.

Alfred R. Page for appellant; William Travers Jerome, district Attorney (Robert S. Johnstone of counsel), for respondent.

WILLARD BARTLETT, *J.:*

The relator, Abraham Kopel, is restrained of his liberty by Theodore A. Bingham, Police Commissioner of the City of New York, under an executive warrant issued by the governor of this State pursuant to the provisions of Section 827 of the Code of Criminal Procedure relative to the apprehension and rendition of fugitives from justice. That warrant recites that it has been represented to the Governor of the State of New York by the Governor of Porto Rico

that Abraham Kopel stands charged in that island with having committed therein, in the district of Aquadilla, the crime of embezzlement, which the said governor certifies to be a crime under the laws of Porto Rico, and that the said Abraham Kopel has fled
48 therefrom and taken refuge in the State of New York. It further recites that the Governor of Porto Rico, pursuant to the Constitution and laws of the United States, has demanded of the Governor of the State of New York that he cause the said Abraham Kopel to be arrested and delivered to Samuel C. Bothwell, a person duly authorized to receive him into his custody and to convey him back to Porto Rico. The warrant thereupon requires the police commissioner to arrest and secure the said Abraham Kopel, and after compliance with the requirements of Section 827 of the Code of Criminal Procedure to deliver him into the custody of said Samuel C. Bothwell to be taken back to Porto Rico, whence he fled.

The present *habeas corpus* proceeding was instituted in behalf of the relator to procure his release from custody under this warrant on the ground that the Governor of Porto Rico, under the Constitution and laws of the United States, possesses no authority to demand the rendition of a fugitive from justice who is charged with an offense against the laws of that island and has fled into one of the States of the Union. The writ was dismissed at Special Term, where the relator's demurrer to the respondent's return was overruled; and the order made at Special Term has been affirmed by the Appellate Division, where it was held that Porto Rico is a Territory within the meaning of section 5278 of the Revised Statutes of the United States relative to interstate extradition, and also that whether Porto Rico be a Territory or not the governor of that island is legally authorized to make a demand for the rendition of a fugitive from justice who has fled into one of the States, with which demand it is the duty of the State executive to comply.

Whatever authority belongs to the Governor of the State of
49 New York to issue a warrant for the apprehension of a fugitive from justice must be found in the provisions of the Constitution of the United States relative to such fugitives and in the statutes enacted in pursuance of those provisions (People *ex rel.* Corkran *v.* Hyatt (172 N. Y. 176, aff'd subnominee Hyatt *v.* Corkran, 188 U. S., 691).

The Constitution of the United States (art. 4, sec. 2, clause 2) provides as follows:

"A person charged in any State with Treason, felony or other crime, who shall flee from justice and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up to be removed to the State having jurisdiction of the crime."

In 1793 Congress gave effect to this provision by an act the substance of which is still in force as Section 5278 of the Revised Statutes of the United States, the material portion of which, so far as this proceeding is concerned, reads as follows:

SECTION 5278. Whenever the executive authority of any State or Territory demands any person as a fugitive from justice of the executive authority of any State or Territory, to which such person

has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory charging the person demanded with having committed treason, felony or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, it shall be the duty of the executive authority of the State or Territory to which such person has fled to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered
50 to such agent when he shall appear."

Although the constitutional provision which has been quoted applies in terms only to fugitives from one State to another State, it has been deemed, when considered in connection with the power of Congress over the Territories (Const. U. S., art. 4, sec. 3, subdiv. 2), to authorize the imposition of like duties upon the executive of a Territory (*Ex parte* Reggel, 114 U. S. 642).

The provisions of the Federal Constitution and the Revised Statutes of the United States to which I have referred have been recognized and acted upon — the Legislature of New York in the enactment of the statute which now constitutes Section 827 of the Code of Criminal Procedure, under which the executive warrant in this case was issued.

It is clear that if the island of Porto Rico was an organized Territory, in all respects and for all purposes possessing the same legal status, for example, as Arizona or New Mexico, or as Utah before Utah was admitted into the Union, there could be no question as to the power of the Governor of New York to cause the arrest and surrender of — Porto Rican fugitive from justice. It is because the Supreme Court of the United States has refused to recognize Porto Rico as in all respects such a Territory that the governor's authority is disputed; the foundation of the relator's claim in this respect being the decision in Downes *ex.* Bidwell (182 U. S., 244, 287), to the effect that while the island of Porto Rico is a Territory appurtenant and belonging to the United States it is not a part of the United States within the revenue clauses of the Constitution.

Notwithstanding this judicial declaration, I am of opinion that the Governor of Porto Rico is authorized to make demand
51 for the rendition of a fugitive from justice provided for in Section 5278 of the Revised Statutes of the United States and contemplated by Section 827 of the Code of Criminal Procedure of New York, and that it is the duty of the Governor of this State upon receiving such a demand from the Governor of Porto Rico, duly authenticated as required by law, to cause such fugitive to be arrested and delivered to the agent authorized by the Governor of Porto Rico to receive him.

While not a Territory within the revenue clauses of the Constitution, Porto Rico possesses most of the attributes of the organized Territories which have so long been a feature of our general govern-

ment. It has been fully organized under an act of Congress prescribing many details of Civil Government in a scheme analogous to that provided for the Territories within the continental boundaries of the United States. It has a- executive, legislative and judicial system of its own. It is represented at the seat of general government by a resident commissioner elected by its citizens, and its local legislative powers, like those of the organized Territories, are made subject to the disapproval of the Congress of the United States (see Act approved April 12, 1900, 31 U. S. Statutes at Large, p. 77). It is true that in this organic act Porto Rico is not denominated a territory, but it is perhaps worthy of note that in the general legislative, executive and judicial appropriation act of 1906, the appropriations for the salary of the resident commissioner from Porto Rico to the United States and his travel/ing expenses appear under the title "Territory of Porto Rico" (U. S. Statutes at Large, 1st session, 59th Cong. part 1, p. 417). The organic act provides in Section 14 that "the statutory laws of the United States not locally inapplicable except as hereinbefore or hereinafter otherwise
52 provided, shall have the same force and effect in Porto Rico as in the United States" except the internal revenue laws (31 U. S. Statutes at Large, 80). It is further provided in Section 17 that the Governor "shall at all times faithfully execute the laws and he shall in that behalf have all the powers of governors of the Territories of the United States that are not locally inapplicable" (31 U. S. Statutes at Large, 81). One of the powers of governors of Territories of the United States is the authority to demand the rendition of fugitives from justice under Section 5278 of the Revised Statutes. This section of the organic act clearly confers that power upon the Governor of Porto Rico unless it can be held that it is for some good and sufficient reason not locally applicable to the affairs of that island. I am unable to perceive any such reason, nor is any suggested in the brief of the able counsel representing the relator on this appeal. He merely argues that the provision which I have quoted from Sections 14 and 17 must refer only to the administration of the internal affairs of the island and that it was not the intention of Congress "to extend these relations growing out of interstate comity." But, as was held by this Court in People *ex rel,* Corkran *v.* Hyatt (*supra*), the exercise of the power of interstate rendition does not depend on comity at all, but upon the positive provisions of the written law. The Constitutional power of Congress to enact the provisions to which reference has been made from Sections 14 and 17 of the organic act under which Porto Rico is governed has not been questioned, and I think that in order to give full effect to those provisions, we must hold that the Governor of Porto Rico has precisely the same power as that possessed by the Governor of any organized Territory to issue a requisition for the return of a fugitive criminal. This was the conclusion
53 reached by Judge Hough of the District Court of the United States for the Southern District of New York in passing upon a similar application by this same relator (*In re* Kopel, 148 Fed.

Rep., 505), and the reasoning by which he reached that result seems to me sound and convincing.

I, therefore, advise an affirmance of the order under review.

Cullen, Ch. J.; Gray, Edward T. Bartlett, Haight, Vann and Hiscock, JJ., concur.

Order affirmed.

54 [Endorsed:] Court of Appeals. The People of the State of New York, *ex rel.* Abraham Kopel, Appellant, against Theodore A. Bingham, Police Commissioner of the City of New York, Respondent. Opinion. Page, Brant & Booth, Attorney for Appellant, Lord's Court Building, 27 William Street, Borough of Manhattan, City of New York, N. Y.

Endorsed on cover: File No. 20,834. New York supreme court. Term No. 167. The People of the State of New York *ex Rel.* Abraham Kopel, plaintiff in error, *vs.* Theodore A. Bingham, Police Commissioner of the City of New York. Filed August 22d, 1907. File No. 20,834.

FILED.
MAR 4 1908
JAMES H. McKENNEY,
CLERK

Supreme Court of the United States,

No. 167

OCTOBER TERM, 1907.

THE PEOPLE OF THE STATE OF NEW YORK, *ex rel.* ABRAHAM KOPEL,

Plaintiff-in-Error,

against

THEODORE A. BINGHAM, Police Commissioner of the City of New York,

Defendant-in-Error.

MOTION TO ADVANCE.

ROBERT C. TAYLOR,
Of Counsel for Defendant-in-Error,
Criminal Courts Building,
New York County, N. Y.

B. H. TYRREL, PRINTER, 206-8 FULTON STREET, NEW YORK.

Supreme Court of the United States.

THE PEOPLE OF THE STATE OF NEW YORK, *ex rel.* ABRAHAM KOPEL,
Plaintiff-in-error,

against

THEODORE A. BINGHAM, Police Commissioner of the City of New York,
Defendant-in-error.

No. 431
October Term,
1907.

Notice of Motion to Advance.

Please take notice that upon the record and all the proceedings herein, the defendant-in-error will move the Supreme Court of the United States, at the Capitol in the City of Washington, District of Columbia, upon the 9th day of March, 1908, at the opening of the Court upon that day, or as soon thereafter as counsel can be heard, to advance this cause upon the docket of the Court for the October Term, 1907, and to set the same for argument at as early a date as may be convenient to the said Court.

Dated, New York, the 28th day of February, 1908.

ROBERT C. TAYLOR,
Counsel for Defendant-in-error,
Criminal Courts Building,
New York County, N. Y.

To Page, Brant & Booth, Esquires,
Attorneys for Plaintiff-in-error,
27 William Street,
Borough of Manhattan,
New York.

SUPREME COURT OF THE UNITED STATES.

The People of the State of New York, *ex rel.* Abraham Kopel, Plaintiff-in-error, *against* Theodore A. Bingham, Police Commissioner of the City of New York, Defendant-in-error.	No. 431 October Term, 1907.

Motion to Advance.

The defendant-in-error hereby moves this Honorable Court, upon the record and all the proceedings herein, to advance this cause upon the docket of the Court for the October Term, 1907, and to set the same for argument at as early a date as may be convenient to the Court.

Dated, New York, the 28th day of February, 1908.

Robert C. Taylor,
Counsel for defendant-in-error,
Criminal Courts Building,
New York County, N. Y.

To PAGE, BRANT & BOOTH, Esqrs.,
Counsel for Plaintiff-in-error,
27 William Street,
Manhattan Borough,
New York City, N. Y.

SUPREME COURT OF THE UNITED STATES.

THE PEOPLE OF THE STATE OF NEW YORK, *ex rel.* ABRAHAM KOPEL,
Plaintiff-in-error,

against

THEODORE A. BINGHAM, Police Commissioner of the City of New York,
Defendant-in-error.

No. 431
October Term, 1907.

MEMORANDUM ON MOTION.

Statement.

This cause presents the question whether or not the Governor of Porto Rico has power and authority to make a requisition upon the Governor of a State of the United States for the arrest and surrender of a fugitive from Porto Rico charged with crime, who has taken refuge in the State, and whether or not the Governor of such State has power and authority to honor such a requisition

and to issue his rendition warrant for the arrest and surrender of such fugitive.

The question calls for the interpretation of and the effect to be given to § 5278, U. S. Rev. Stats., which relates to interstate and inter-territorial rendition, and the Act of Congress of April 12th, 1900; Chap. 191; 31 U. S. Stat. L. 77. In considering the applicability of these Statutes, it becomes necessary to ascertain the relative effect of the following provisions of the U. S. Constitution:

Art. 4, Sec. 2, Subd. 2, U. S. Const.
Art 4, Sec. 3, Subd. 2, U. S. Const.

Also, Art. IX, of the Treaty of Paris.

A summary of the questions requiring determination follows:

First.—Whether Porto Rico is a "territory" of the United States within the meaning of the extradition statute; and

Second.—If Porto Rico is not technically a "territory", whether sufficient authority exists in the law to authorize the Governor thereof to make a requisition for the surrender of a fugitive from justice on the Governor of a State of the United States and to warrant the Governor of such State in honoring such a requisition.

Third.—Whether the Court of Appeals of the State of New York erred in affirming the orders of the lower Courts of the State overruling the demurrer to the return to the writ of habeas corpus and dismissing the writ of habeas corpus and remanding the plaintiff in error, Abraham Kopel, to the custody of the Police Commissioner of the City of New York, with directions to deliver him

into the custody of the duly accredited agent of the Governor of Porto Rico, authorized to receive him and convey him back to Porto Rico, and in refusing to discharge the plaintiff-in-error, Abraham Kopel, from custody.

Fourth.—Whether the plaintiff-in-error was and is deprived of his liberty without due process of law in violation of the fifth article of amendment of the Constitution of the United States.

Resume of the Proceedings.

The Governor of Porto Rico made a requisition on the Governor of the State of New York, representing to the latter that one Abraham Kopel stood charged in that island, with having committed, therein, in the District of Aquadilla, the crime of embezzlement, which the said Governor of Porto Rico certified to be a crime under the laws of the said Porto Rico and that the said Abraham Kopel had fled therefrom and taken refuge in the State of New York; and the said Governor of Porto Rico did, pursuant to the Constitution and laws of the United States, demand of the Governor of the State of New York that he cause the said Abraham Kopel to be arrested and delivered to Samuel C. Bothwell, who was duly authorized by the warrant of the Governor of Porto Rico to receive him into his custody and convey him back to Porto Rico.

The Governor of the State of New York, thereupon, upon the 30th day of July, 1906, honored the said requisition and issued his rendition warrant directing the Police Commissioner of the City of New York,—the defendant-in-error, or the Sheriff or other officers authorized by the law of the State of New York to execute the said war-

rant to make the arrest and delivery of the said Abraham Kopel, after compliance with the provisions of the laws of the State of New York in such case made and provided.

This rendition warrant was executed by the Police Commissioner on September 11th, 1906: Upon the 12th day of September, 1906, a writ of habeas corpus was issued out of the Supreme Court of the State of New York, requiring the said Police Commissioner to produce before the said Court, upon September 13, 1906, the body of said Kopel together with the time and cause of his imprisonment and detention.

Upon the said 13th day of September, 1906, pursuant to the command of the said writ of habeas corpus the Police Commissioner produced the prisoner before the said Supreme Court and made return to the writ assigning as the true cause of the imprisonment and detention the aforesaid rendition warrant of the Governor of the State of New York. A copy of the warrant was annexed to and made part of the return, and the original warrant was duly exhibited to the Supreme Court.

The relator, Abraham Kopel, demurred to the said return on the ground that it was insufficient in law on the face thereof and that it appeared upon the face thereof that the warrant by virtue of which the prisoner was detained had been issued without jurisdiction.

The relator then conceded that he was the same person named in the rendition warrant and in the requisition of the Governor of Porto Rico and the information and other papers accompanying the same upon which the said warrant had been issued. After a hearing and due deliberation, and upon the 12th day of October, 1906, the New York Supreme Court, in and for the County of New York,

duly made and entered an order overruling the demurrer, dismissing the writ and remanding the relator to the Police Commissioner's custody, with directions to the Police Commissioner to deliver him into the custody of the agent of the island of Porto Rico authorized as aforesaid to receive him.

The relator then appealed from said order to the Appellate Division of the Supreme Court of the State of New York, in and for the First Judicial Department; and said Appellate Division duly affirmed the order. The opinion on which this order was affirmed is reported in 117 App. Div., 411.

The relator then appealed from the order of the Appellate Division to the Court of Appeals, being the Court of last resort of the State of New York. Said Court of Appeals affirmed the order of the Appellate Division on the 14th day of June, 1907, and remitted the cause to the Supreme Court there to be proceeded upon according to law. The opinion on which the Court of Apepals affirmed is reported in 189 N. Y., 124. Thereafter, on the 20th day of June, 1907, the Supreme Court of the State of New York, duly made and entered an order on the Court of Appeals remittitur, making the order of the Court of Appeals the order of said Supreme Court.

In this cause the relator contended that the provisions of Sections 5278 and 5279 of the U. S. Rev. Stats. relating to extradition between States and Territories of the United States, did not apply to Porto Rico.

It was also contended by the plaintiff-in-error that the provisions of Sections 14 and 17 of the Act of Congress of April 12, 1900 (the Organic

Law of Porto Rico) giving to the statutory laws of the United States, not locally inapplicable, full force and effect in Porto Rico and charging the Governor of Porto Rico with the duty of faithfully executing the laws and conferring upon him in that behalf all the powers of Governors of the Territories of the United States which were not locally inapplicable, did not confer the power to make a requisition on the Governor of a State of the United States for the surrender of a fugitive from the justice of Porto Rico.

The courts of New York overruled the plaintiff-in-error's contentions.

Reasons for This Application.

The question involved is of considerable importance to the States and to Porto Rico. The relations between the Island and the States are intimate, both legally and commercially. The jurisdiction of the United States over acts and laws of Porto Rico is settled. The right of the Island to demand the extradition of a criminal from the United States is questioned. By a parity of reasoning the right of a state to demand extradition of a criminal from Porto Rico is questioned.

The proper and efficient administration of the criminal law in the United States and in Porto Rico requires an early determination of this question. If persons accused of crime may not be extradited under the existing statutes, proper legislation should be enacted by Congress at once to cure the defect, as was done in connection with the Philippine Islands. If the existing statutes are inadequate, persons committing crimes in the United States or in Porto Rico may seek either one place or the other as a haven of refuge and

so prevent prosecutions for crimes which may not be extraditable offenses, unless provided for by Treaty. If, however, this Court should sustain the rulings of the State Courts, the danger of defeating the ends of justice in the manner described will be eliminated. Should this motion to advance be granted, the States and Territories will have an early ruling, by way of precedent, declaring the rights and powers of the Governors of the States and the Governor of Porto Rico. The constitutional right of certain and immediate justice will be thus promoted.

Furthermore, the Attorney-General of Porto Rico has requested the District Attorney of New York County to file a motion to advance this cause, because of its importance to Porto Rico in the proper and legal administration of its criminal laws.

ROBERT C. TAYLOR,
Of Counsel for Defendant-in-error.

(Supreme Court, U. S.
FILED)
MAR 30 1908
JAMES H. McKENNEY,
Clerk

Supreme Court of the United States.

No. 167
October Term, 1907.

THE PEOPLE OF THE STATE OF NEW YORK ex rel.
ABRAHAM KOTEL,
Plaintiff in Error,

against

THEODORE A. BINGHAM, Police Commissioner of the City of New York,
Defendant in Error.

Affidavit on Motion to Advance.

ALFRED E. PAGE,
Of Counsel for Plaintiff in Error,
27 William Street,
New York City.

Supreme Court of the United States. 1

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* ABRAHAM KOPEL,
Plaintiff in Error,

AGAINST

THEODORE A. BINGHAM, Police Commissioner of the City of New York,
Defendant in Error.

No. 431.
October Term,
1907.

2

STATE OF NEW YORK,
City and County of New York, } ss.:

ALFRED R. PAGE, being duly sworn, says: That he is of counsel for the plaintiff in error above named, and has had sole charge of these proceedings since the issuance of the writ of *habeas corpus* in the Supreme Court of the State of New York. That the writ of error herein was issued on the 10th day of July, 1907, and the record was filed in the Clerk's office of this Court on the 8th day of August, 1907. 3

That the District Attorney of New York County well knows that deponent was a member of the Senate of the State of New York, representing the 19th Senate District, which is a portion of the County of New York, and that the session of the

Legislature of the State of New York is required by the Constitution of said State to commence on the first Wednesday of January in each year; and that although this motion could have been made on the 7th day of October, 1907, and at any time subsequent thereto, and prior to the first of January, and that deponent could, without serious inconvenience, at that time, have prepared and argued the case; nevertheless, the making of this motion has been delayed until the busiest period of the legislative session, when deponent's time is almost entirely occupied by his legislative duties.

That the sessions of the Legislature of the State of New York have for a number of years last past lasted until the first week in May, and deponent verily believes that the Legislature will this year adjourn about the first of May.

That the questions involved in this case are of importance, and deponent desires an opportunity to carefully prepare and present the same to the Court, and therefore requests that the case be set for argument at such date after the first of May as will be convenient for the Court, and allow deponent sufficient time to prepare his brief.

ALFRED R. PAGE.

Subscribed and sworn to this 6th day of March, 1908.

JOS. F. McGOWAN,
Notary Public,
N. Y. Co.

[SEAL.]

THE EVENING POST JOB PRINTING OFFICE, 156 FULTON ST., N. Y.

Office Supreme Court, U. S.
FILED.
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CLERK

Supreme Court of the United States.

The People of the State of New York *ex rel.* ABRAHAM KOPEL,
Plaintiff in error,
vs.
THEODORE A. BINGHAM, Police Commissioner of the City of New York,
Defendant in error.

No. 167.

BRIEF FOR PLAINTIFF IN ERROR IN REPLY.

Point IV Considered.

The learned counsel for the defendant in error fails to appreciate the difference between "territory of the United States" and "a Territory of the United States."

An examination of all the cases cited on his brief, pages 9-23, shows that the Court used the word territory in the sense of a domain over which the United States exercises its right of sovereignty rather than a domain of the United States that by Act of Congress has been organized under a separate government in the expectation that it would ultimately be admitted into the Union as a state. No one would seriously contend that since the treaty of Paris Porto Rico had not been territory of the United States, and that Congress has full power

to legislate for said territory. That an Act of Congress has been passed organizing a government for Porto Rico does not make Porto Rico a territory of the United States. The status of the residents of the Island of Porto Rico has not been changed by the establishment of such government. They do not become thereby citizens of the United States, and the territory has not become incorporated into the United States, but is still held as an insular possession of the United States.

The important consideration it is submitted is not whether there is an organized government in Porto Rico, but whether Porto Rico has become incorporated into the United States and technically become a Territory of the United States, for unless it has it is submitted that Sections 5278 and 5279 of the Revised Statutes does not apply.

Point VI Considered.

At pages 36–38 the learned counsel quotes from the opinion of Judge Hough upon a former application of this plaintiff in error, and rests his argument entirely upon the reasons stated by the learned judge, and that is, that inasmuch as the Organic Act of Porto Rico requires that the Governor shall at all times faithfully execute the laws and shall in that behalf have all the powers of the governors of the territories of the United States that are not locally inapplicable, Sections 5278 and 5279 are by implication extended to Porto Rico. It is settled by a long line of authorities in this Court that a criminal statute cannot be extended by construction or implication. That the accused must be brought within the express provisions of law.

U. S. *v.* Wiltberger, 5 Wheat., 76;
U. S. *v.* Reese, 92 U. S., 214;
Mackin *v.* U. S., 117 U. S., 348;
Sarlls *v.* U. S., 152 U. S., 570–576;
France *v.* U. S., 164 U. S., 674–683;
U. S. *v.* Harris, 177 U. S., 305–310.

Had it been the intention of Congress to have extended Sections 5278 and 5279 to Porto Rico it would have amended those sections by inserting after the word territory "insular possessions" or "territories subject to the jurisdiction of the United States," or other apt words expressly to extend those sections to the Island, and Congress having failed to do so the Court has no power to read into this statute such a provision. It is submitted that in the Organic Act there is nothing to show that Congress had these provisions in mind in the declaration of the powers of the Governor of Porto Rico, and further, Sections 5278 and 5279 refer to the relations between states and territories, which have been shown on our former brief to have grown out of interstate comity and can have no relation with mere dependencies or possessions of the United States.

Point VII considered.

In reply to the argument of the learned counsel for the defendant in error that Section 5270 of the Revised Statutes is inapplicable by its own terms because "Porto Rico is neither foreign country nor foreign territory" The cases cited by the learned counsel at pages 40 and 41 in support of this contention disapprove his argument.

Porto Rico in an international sense is domestic territory of the United States, because it is subject to the jurisdiction and control thereof.

De Lima *v.* Bidwell, 182 U. S., 1.

It was foreign to the United States in a domestic sense, because the Island had not been incorporated into the United States, but was merely appurtenant thereto as a possession.

Downes *v.* Bidwell, 182 U. S., 244, 341–342.

The Fourteen Diamond Rings case, 183 U. S., 176–181, and U. S. *v.* Heinszen, 206 U. S., 370–379,

dealt with the relations of the Philippine Islands, and in the discussion of the decisions of De Lima *v.* Bidwell and Downes *v.* Bidwell, *supra*, the Court clearly recognizes the distinction above set forth. Therefore, it is submitted that where the question under consideration is that of interstate extradition Porto Rico is foreign and not domestic territory of the United States. Every citizen of the United States has the constitutional right to be prosecuted by presentment or indictment of the grand jury when charged with an infamous crime. In order that an equivalent investigation may be made before he is surrendered to be tried in foreign country, Section 5270 of the United States Revised Statutes provided for his being arraigned in a court of the United States for the purpose of ascertaining whether there is evidence establishing probable cause that he is guilty of the offense charged.

It is submitted that the purpose of this provision is to secure in a measure a preliminary investigation similar to that conducted by the grand jury, and when the United States acquired jurisdiction over territory where the right to this preliminary investigation was not secured, Congress very properly by amendment extended Section 5270 to those cases.

That this amendment is not limited merely to Cuba and the Isle of Pines must appear, it is submitted from the fact that our occupation of Cuba and the Isle of Pines was understood and intended to be temporary. Had Congress intended to legislate for a temporary condition, it is submitted that a special act would have been passed providing for cases arising during our temporary occupancy and the general statute relating to international extradition would not have been amended.

Respectfully submitted,

ALFRED R. PAGE,
Of Counsel.

The Supreme Court,
U.S.
OCT 8 1896
JAMES H. MCKENN
Clerk

No. 167.

Supreme Court of the United States.

OCTOBER TERM, 1896.

THE PEOPLE OF THE STATE OF NEW YORK, ex rel.
ABRAHAM KOREL,

Plaintiff in Error,

vs.

THEODORE A. BINGHAM, Police Commissioner of the City of New York,

Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR.

[illegible]
Attorneys for Plaintiff in Error.

[illegible]
[illegible] City.

THE EVENING POST JOB PRINTING OFFICE, 156 FULTON ST., N. Y.

Supreme Court of the United States,

OCTOBER TERM, 1908.

THE PEOPLE OF THE STATE OF NEW YORK, *ex rel.* ABRAHAM KOPEL, Plaintiff in error, vs. THEODORE A. BINGHAM, Police Commissioner of the City of New York, Defendant in error.	No. 167.

BRIEF FOR PLAINTIFF IN ERROR.

Statement.

This is a writ of error to review a final order of the Supreme Court of the State of New York, rendered on an order of the Court of Appeals of that State, affirming an order theretofore made by the Supreme Court which overruled a demurrer to the return to a writ of *habeas corpus* and remanded the plaintiff in error to the custody of the defendant in error.

On the 30th day of July, 1906, the Governor of the State of New York issued his warrant reciting that it had been represented by the Governor

of Porto Rico that Abraham Kopel stands charged in that island with having committed therein, in the District of Aquadilla, the crime of embezzlement, which the said Governor certifies to be crime under the laws of Porto Rico, and that the said Abraham Kopel has fled therefrom and taken refuge in the State of New York, and that the said Governor of Porto Rico had, pursuant to the Constitution and laws of the United States, demanded that said Abraham Kopel be arrested and delivered to Samuel C. Bothwell, who was duly authorized to receive him into custody and convey him back to Porto Rico (Record, p. 2). A writ of *habeas corpus* having been issued (p. 1), and upon the return thereto, assigning as cause for the detention of the relator the said warrant of the Governor of the State (pp. 1-3), the plaintiff in error demurred to said return on the ground that it was insufficient in law upon the face thereof and that the warrant of the Governor had been issued without authority and was illegal and void (p. 3). An order was entered overruling the demurrer, dismissing the writ and remanding the relator (p. 3). An appeal was taken to the Appellate Division of the Supreme Court (p. 4), and the order was affirmed (p. 6), and an appeal taken to the Court of Appeals of the State of New York (p. 13), and the order affirmed (p. 14), and the matter remitted to the Supreme Court of the State of New York (pp. 14-15), and from the final order entered thereon (pp. 15-16) the relator obtained a writ of error to this Court (pp. 16-23).

The Questions Involved.

The questions involved are whether the Governor of Porto Rico had power and authority to make a requisition upon the Governor of the State of New York for the arrest and extradition of a fugitive from justice, and whether the Governor of

the State of New York had power and authority to honor such a requisition and to issue his rendition warrant for the arrest and surrender of such a fugitive?

The consideration of these questions involves further questions.

I.—Whether Porto Rico is a "territory" of the United States within the meaning of the extradition statute.

II.—If Porto Rico is not a "territory," whether sufficient authority exists in the law to authorize the Governor thereof to make a requisition for the surrender of a fugitive from justice on the Governor of a State of the United States and to warrant the Governor of such State in honoring the requisition.

III.—Whether there is another and different procedure provided by law, under which the Governor of Porto Rico must proceed to extradite a fugitive from justice.

IV.—Whether the plaintiff in error was and is deprived of his liberty without due process of law, in violation of the fifth article of amendment of the Constitution of the United States. And by reason whereof

V.—Whether the Court of Appeals of the State of New York erred in affirming the orders of the Supreme Court of that State overruling the demurrer to the return to the writ of *habeas corpus* and remanding the plaintiff in error to the custody of the defendant in error with direction to deliver him into the custody of the duly accredited agent of the Governor of Porto Rico to be conveyed back to Porto Rico and in refusing to discharge the plaintiff in error from custody.

POINTS.

I.

Extradition between states, territories and countries subject to the jurisdiction of the United States depends solely on the provisions of the Constitution of the United States and the Acts of Congress.

The right to arrest a person, and transfer him to another jurisdiction must be clearly expressed either in constitutional provision or legislative enactment; otherwise, he would be deprived of his liberty without due process of law, contrary to the Fifth Amendment to the Constitution of the United States.

The history of the development of interstate extradition from colonial times to the adoption of the Constitution of the United States is given in Kentucky *vs.* Dennison, 24 How., 66, in which it was shown that the present Constitutional provision (Art. IV, Sect. 2, sub. 2) was substantially in the same words as used in the Articles of Confederation, but that "the Confederation was only a league of separate sovereignties in which each State within its own limits held and exercised all the powers of sovereignty; and the Confederation had no officer, either executive, judicial or ministerial through whom it could exercise an authority within the limits of a State. In the present Constitution, however, these powers, to a limited extent, have been conferred on the general government within the territories of the several States." * * * "The duty of providing by law the regulations necessary to carry this compact into execution, from the nature of the duty and the object

in view was manifestly devolved upon Congress."

There is no reserve power in the State to surrender a fugitive as a matter of favor or comity. "No person can be extradited from one State to another unless the case falls within the Constitutional provisions."

People *ex rel.* Corkran *vs.* Hyatt, 172 N. Y., 183; affirmed, 188 U. S., 691.

It follows therefore, that unless the case at bar falls within the provision of the Constitution or within the acts of Congress passed pursuant thereto, the plaintiff in error could not lawfully be extradited. It can not be done by comity nor by reading into the statute, by interpretation a power not expressly delegated and expressly acted upon by Congress.

II.

This case does not come within any provision of law for extradition between Porto Rico and the State of New York.

There are four distinct provisions of law authorizing extradition of an alleged fugitive from justice:

1. Extradition between States upon the demand of the Governor of one State upon the Governor of another.

U. S. Constitution, Art. 4, Sect 2.

2. Extradition between States and Territories of the United States upon the demand of the Governor.

U. S. Revised Statutes, Sects. 5278, 5279.

3. Extradition between foreign countries or territories occupied by or under the control of the United States and other parts of the United States, on demand of the chief executive officer upon the Secretary of State of the United States.

U. S. Revised Statutes, Sec. 5270, as amended June 6, 1900.

4. Extradition between States, Territories and Districts or insular possessions under special statutes.

District of Columbia, U. S. Revised Statutes, Sect. 843.

Indian Territory, Act of Congress, May 2, 1890. Revised St., Sect. 14.

Philippine Islands, Chapter 529, Laws of U. S., 1903; Chapter 454, Laws of U. S., 1905.

Alaska (when same was a District), Chapter 429, Laws 1899.

To which might be added the right of removal of a person charged with an offense against the laws of the United States when indicted in the United States Court from the District in which he was apprehended to the District in which he was indicted.

U. S. Rev. Statutes, Sect. 1014.

This case does not come within the provisions of the Constitution (1 above), because Porto Rico is not a State. Nor under Section 5270 of the Revised Statutes (3) as the proceedings were not had through the Secretary of State of the United

States as therein provided. Nor is there any special statute providing for extradition for Porto Rico (4).

The proceedings for extradition in this case were had under (2) Sections 5278 and 5279, which do not apply, as

PORTO RICO IS NOT A TERRITORY OF THE UNITED STATES.

Section 5278 of the United States Revised Statutes reads as follows:

> "Sec. 5278. Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any state or territory, charging the person demanded with having committed treason, felony, or other crimes, certified as authentic by the Governor or Chief Magistrate of the State or Territory from whence the person so charged has fled, it shall be the duty of the executive authority of the State or Territory to which such person has fled, to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand or to the agent of such authority appointed to receive the fugitive and to cause the fugitive to be delivered to such agent when he shall appear. * * *"

The word "territory" as used in this statute does not mean "The entire domain over which a sovereign state exercises as by right of sovereignty; as it happened within United States territory," but it means "a division of the national domain of the United States that by Act of Congress has been organized under a separate government in the expectation that it or some part thereof will ultimately be admitted into the Union as a state; as Arizona is a territory."

Standard Dictionary.

The word territory when used in the same sense as in Section 5278 has been judicially defined. An Act of Congress making criminal a certain act if committed "in the District of Columbia or other place, *except the Territories*, over which the United States has exclusive jurisdiction." The Court said, "We think the words 'except the Territories' have reference exclusively to that system of organized government long existing within the United States, by which certain regions of the country have been erected into civil governments. These governments have an executive, legislative and a judicial system. They have the powers which all these departments of government have exercised, which are conferred upon them by Act of Congress, and their legislative acts are subject to the disapproval of the Congress of the United States; they are not in any sense independent governments * * * yet they exercise nearly all the powers of governments under what are generally called organic acts, passed by Congress, conferring such powers on them. It is this class of governments, long known by the name of Territories, that the Act of Congress excepts from the operation of this statute, while it extends it to all other places over which the United States have exclusive jurisdiction."

Ex-parte Lane, 135 U. S., 443-447.

> "The word 'territory' when used to designate a political organization has a distinctive, fixed and legal meaning under our political institutions. We find a continental resolution of October 10, 1780, to be the foundation of our territorial system. This declares that the 'demesne or territorial lands, shall be disposed of for the common benefit of the United States, and be settled and formed into distinct republican states, which shall become members of the Federal Union and have the same rights of sover-

eignity, freedom and independence as other states."

Ex parte Morgan, 20 Fed. R., p. 304.

A territory has also been defined as an "inchoate state."

S. C. 305.

In the territories of the United States the residents are citizens of the United States and entitled to all the protection and guarantees of the Constitution of the United States.

Thompson *vs.* Utah, 170 U. S., 343, 346 and cases cited.

In the territories both branches of the Legislature are elected by the people of the territory; the taxes are collected by the United States Government, and the payment of expenses of government made from the United States Treasury, and the United States Internal Revenue Laws apply.

Porto Rico possesses none of these attributes. A resident of Porto Rico is not and cannot become a citizen of the United States, and his children, though born after the island was acquired, do not become citizens of the United States.

The constitutional safeguards do not extend, *ex propriore vigore*, to the people of the island.

Dorr *vs.* U. S., 195 U. S., 138-143.

The highest branch of the legislative body is appointed by the executive and is not elected by the people, thus being modeled on the plan of a British Crown possession, rather than of a territory of the United States.

31 U. S. Stat. at L. 77, Sec. 27-28.

The taxes are collected by the insular government and the expenses of government are paid from the insular treasury.

The United States Internal Revenue Laws do not apply.

Goetz *vs.* U. S., 103 Fed. R., 72-79-86.
Downes *v.* Bidwell, 182 U. S., 244-279.

In the case last mentioned it was distinctly held that Porto Rico was not a foreign country in an international sense, since it was subject to the sovereignity of, and owned by the United States after the treaty of cession; yet, it continued to be foreign to the United States in a domestic sense, because it had not been incorporated into the United States, but was merely appurtenant thereto as a possession (p. 287). It was also pointed out that Porto Rico had the right under 31 U. S. Statutes at Large, 77, to impose duties upon imports from the United States. This could not be done if Porto Rico was a part of the United States, as the Constitution provides that "no tax or duty shall be laid on articles exported from any State," and no preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall any "vessel bound to or from one State be obliged to enter, clear, or pay duties in another."

That Porto Rico is not a territory is recognized by the organic act, 31 Stat. at Large, 77. Section 17, of the act providing that the Governor "shall at all times faithfully execute the laws, and he shall in that behalf have all the powers of governors of the territories of the United States that are not locally inapplicable;" and by Section 35 the right of this Court to review the judgments of the Supreme Court of Porto Rico, extends "to the same cases as from the Supreme Court of the territories of the United States." These provisions would be unnecessary if Porto Rico was a Territory of the United States.

By the practical construction of Congress, Porto Rico has been termed an "INSULAR POSSESSION."

In the Pure Food Bill, so-called, Chapter 384, of the Laws of the United States of 1906, Section 10: "That an article of food, drug or liquor that is adulterated or misbranded within the meaning of this act, and is being transported from one state, territory, district or insular possession to another for sale * * * or offered for sale in the District of Columbia or of the territories or insular possessions of the United States * * * shall not be sold or otherwise disposed of contrary to the provisions of this act or the laws of any state, territory, district or insular possession."

And again the Immigration Bill, Chapter 338, Laws of the United States of 1906, named distinctly the courts that can naturalize citizens, being the United States Courts in the various States, and the Territories of Alaska, Arizona, New Mexico, Oklahoma, Hawaii, the Supreme Court of the District of Columbia and the United States Courts for the Indian Territory, thus by exclusion depriving the United States Courts of Porto Rico from the power to naturalize, and then the act provides, "also all courts of record in any State or Territory now existing, or which may hereafter be created, having a seal, a clerk, and jurisdiction in actions at law or equity, or law and equity, in which the amount in controversy is unlimited."

If Porto Rico were to be deemed a Territory of the United States, the absurdity would follow that the act would confer jurisdiction upon the local courts to grant naturalization which was prohibited to the United States Courts.

It is submitted that by the decision of the Courts, and by Acts of Congress it has been settled that

Porto Rico is not a Territory of the United States. This was practically conceded by the Court below.

People *ex rel.* Kopel *v.* Bingham, 189 N. Y., 125.

Therefore not being a Territory, Sections 5278-5279 of the Revised Statutes do not apply.

III.

The Acts of Congress relating to extradition cannot be extended by construction to apply to places other than those specified in the Acts themselves.

We have seen that Sections 5278 and 5279 do not in terms extend to "Insular possessions" of the United States, but are limited to States and Territories.

We have further seen that all powers of the State to surrender a citizen is derived from these acts and the Constitution, and that there is no reserve or implied power in the State.

In addition to States and Territories, it is a well-recognized fact that there exist territory occupied by and under the jurisdiction of the United States, which is not covered by either the designation of a State or Territory.

This is stated in Downes *vs.* Bidwell (*supra*).

> "The 13th Amendment to the Constitution, prohibiting slavery and involuntary servitude 'within the United States, or in any place subject to their jurisdiction,' is also significant as showing that there may be places within the jurisdiction of the United

States that are no part of the Union. To say that the phraseology of this amendment was due to the fact that it was intended to prohibit slavery in the seceded states, under a possible interpretation that those States were no longer a part of the Union, is to confess the very point in issue, since it involves an admission that, if these States were not a part of the Union, they were still subject to the jurisdiction of the United States.

"Upon the other hand, the 14th Amendment, upon the subject of citizenship, declares only that 'all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside.' Here there is a limitation to persons born or naturalized in the United States, which is not extended to persons born in any place 'subject to their jurisdiction'" (p. 251).

And again:

"Not only did the people in adopting the 13th Amendment thus recognize a distinction between the United States and 'any place subject to their jurisdiction,' but Congress itself, in the act of March 27, 1804 (2 Stat. at L., 298, chap. 56), providing for the proof of public records, applied the provisions of the act, not only to 'every court and office within the United States,' but to the 'courts and offices of the respective territories of the United States and countries subject to the jurisdiction of the United States,' as to the courts and offices of the several States. This classification, adopted by the Eighth Congress, is carried into the Revised Statutes as follows:

"'Sec. 905. The acts of the legislature of any state or territory, or of any country subject to the jurisdiction of the United States, shall be authenticated,' etc.

"'Sec. 906. All records and exemplifications of books which may be kept in any

> public office of any state or territory, or of any country subject to the jurisdiction of the United States,' etc.
>
> "Unless these words are to be rejected as meaningless, we must treat them as a recognition by Congress of the fact that there may be territories subject to the jurisdiction of the United States, which are not of the United States" (pp. 277-8).

See also

> Hawaii *vs.* Mankichi, 190 U. S., 197;
> Dorr *vs.* U. S., 195 U. S., 138.

This territory which is subject to the jurisdiction of the United States, but not embraced in States or Territories, comprise the Districts and Insular Possessions, and that Sections 5278-5279 of the Revised Statutes do not apply to them is shown by the fact that Congress has found it necessary to pass special statutes providing for extradition (see page 6 of this Brief).

It is claimed that inasmuch as Section 14 of the organic act of April 12, 1900, provides "that the statutory laws of the United States, not locally inapplicable," shall have the same force and effect in Porto Rico as in the United States, and that Section 17 provides, "that the Governor of Porto Rico shall at all times faithfully execute the laws, and he shall in that behalf have all the powers of Governors of the Territories of the United States that are not locally inapplicable," therefore, the Governor of Porto Rico must have the powers of a Territorial Governor in extradition cases.

But as we have shown, Sections 5278 and 5279 are not applicable to Porto Rico, because it is neither a State nor a Territory of the United States, and hence by the terms of the statute itself is made inapplicable and is therefore "locally inapplicable."

As to the language of Section 17, the "Governor

of Porto Rico shall at all times execute the laws, and he shall IN THAT BEHALF have all the powers of Governors of the Territories of the United States that are not locally inapplicable," instead of being an argument in favor of the existence of the power to issue a requisition on the Executive of a State, it is submitted, is an express limitation. The Governor as the Executive of the Island is to execute the laws; this has reference to the administration of the internal affairs of the Island, and not to its external relations, and "in that behalf" he is to have all the powers of a Territorial Governor. But the power to issue a requisition for extradition is given only to Governors of States and Territories and therefore this power of the Territorial Governor would be locally inapplicable. Hence, there was no authority of law for the Governor of Porto Rico to make a requisition for the surrender of the plaintiff in error on the Governor of the State of New York or to warrant the Governor of the State of New York to honor the same.

IV.

Extradition might be had under Section 5270 of the Revised Statutes as amended.

At the conclusion of the Spanish-American War this country, as the result of conquest and treaty, had obtained certain insular possessions inhabited by people alien to our language and institutions. These possessions were not held, as had been our former Territories, "to be settled and formed into distinct republican States, which shall become

members of the Federal Union." The inhabitants of which were not, and did not become, citizens, but were and are subjects, with no right of citizenship, and only protected by the constitutional guarantees in so far as they have been extended to them. These possessions did not become and have not been incorporated into the United States, but are occupied by and under the control of the United States.

Prior to the treaty of cession extradition was had through the Secretary of State under Section 5270, Revised Statutes. After these possessions were obtained Congress amended Section 5270 by adding a proviso:

> "Provided, That whenever any foreign country or territory, or any part thereof, is occupied by or under the control of the United States, any person who shall violate, or who has violated, the criminal laws in force therein, by the commission of any of the following offenses, namely: * * * and who shall depart or flee, or who has departed or fled, from justice therein to the United States, or to any Territory thereof, or to the District of Columbia, shall, when found therein, be liable to arrest and detention by the authorities of the United States, and on the written request or requisition of the military governor or other chief executive officer in control of such foreign country or territory shall be returned and surrendered, as hereinafter provided, to such authorities for trial under the laws in force in the place where such offense was committed. All the provisions of sections fifty-two hundred and seventy to fifty-two hundred and seventy-seven of this title, so far as applicable, shall govern proceedings authorized by this proviso: Provided further, That such proceedings shall be had before a judge of the courts of the United States only, who shall hold such person on evidence establishing probable cause that he is guilty of the offense

> charged: And provided further, That no return or surrender shall be made of any person charged with the commission of an offense of a political nature. If so held such person shall be returned and surrendered to the authorities in control of such foreign country or territory on the order of the Secretary of State of the United States, and such authorities shall secure to such person a fair and impartial trial" (31 Stat. at L., 656, chap. 793).

By this means a person who should be returned to these possessions was assured a hearing in the United States Courts in the District in which he was apprehended, and safeguard were given that he might have a fair trial upon the charge and no other on which he was apprehended, and this amendment to Section 5270, it is submitted, was made by Congress to continue the practice in regard to these possessions, until they should become incorporated into the United States, as Territories or States, and the accused could have the benefit of our constitutional guarantees that he should not be held to answer, unless "under a presentment or indictment of a grand jury," "nor be subject for the same offense to be twice put in jeopardy of life or limb," "nor compelled to be a witness against himself, nor deprived of life, liberty or property without due process of law" (5th Amend. Const. U. S.). That he should "enjoy the right to a speedy trial by an impartial jury," and be "informed of the nature and cause of the accusation;" be "confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense" (6th Amendt.). All these privileges and immunities can be enforced by the United States Government if proceedings are had under Section 5270. While there is no power that can even compel a trial on the charge on which

he was extradited and protect him from being held on other and different charges if he is surrendered under Section 5278.

People *ex rel.* Corkran *vs.* Hyatt (*supra*).

> "The states and territories are communities of people who are citizens of the United States, and who enjoy the rights and perform the duties of citizens."
>
> *Ex parte* Morgan (*supra*), p. 306.

It may well be that between such communities there should be the right to demand the unconditional surrender of an alleged fugitive from justice. The same privileges and immunities which he enjoys in one State are guaranteed in the other. But it is submitted that a citizen of the State of New York should not thus be surrendered, to be tried where these privileges and immunities do not obtain as a matter of right.

In Section 5270, Congress had made provision for this case and the Governor of Porto Rico should be required to proceed under that section, and Section 5278 should not be by construction extended beyond its plain terms.

V.

The order dismissing the writ of habeas corpus should be reversed, the writ allowed and the plaintiff in error discharged.

Alfred R. Page,
Of Counsel for Plaintiff in Error.

Supreme Court of the United States

OCTOBER TERM, 1908

Office Supreme Court, U. S.
FILED.
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JAMES H. McKENNEY,
CLERK

THE PEOPLE OF THE STATE OF NEW YORK, *ex rel.* ABRAHAM KOPEL,

Plaintiff in error,

vs.

THEODORE A. BINGHAM, Police Commissioner of the City of New York,

Defendant in error.

No. 167

Brief for Defendant in Error

ROBERT C. TAYLOR,
Of Counsel for the Defendant in Error,
Criminal Court Building,
New York City, N. Y.

ROBERT S. JOHNSTONE.

J. H. TYRRELL, PRINTER, 206-8 FULTON STREET, NEW YORK.

Supreme Court of the United States,

OCTOBER TERM, 1908.

THE PEOPLE OF THE STATE OF NEW YORK, *ex rel.* ABRAHAM KOPEL, Plaintiff in error, *vs.* THEODORE A. BINGHAM, Police Commissioner of the City of New York, Defendant in error.	No. 167.

Brief for Defendant in Error.

Statement.

This is an extradition proceeding brought for the purpose of returning Kopel, the plaintiff in error, back to **Porto Rico.**

The matter comes up upon a writ of error to review a final order made by the Supreme Court of the State of New York, whereby an order of the Court of Appeals was made the order of the court below. The Court of Appeals had affirmed an

order theretofore made by the Appellate Division of the Supreme Court (see 189 N. Y. 124). The Appellate Division had, in turn, affirmed an order of the Special Term of the Supreme Court (see 117 App. Div. 411). The Special Term had overruled a demurrer interposed by Kopel, the plaintiff in error, to the return to a certain writ of habeas corpus, and had remanded the said Kopel to the custody of the defendant in error, with directions to deliver him to one Bothwell, the agent of Porto Rico, to be taken back to Porto Rico, whence he had fled.

POINT I.

The facts involved:

Although a question of law of great importance is presented; nevertheless, the facts are of the simplest character. Counsel presents them in chronological order. His references are to the folios of the Transcript of the Record.

Upon Sept. 11, 1906, the plaintiff in error, Kopel, was taken into custody by the defendant in error, Bingham, who was the Police Commissioner of the City of New York (fol. 2). The arrest was made in pursuance of a rendition warrant, issued by the Governor of the State of New York, which recited that Kopel was charged with having committed embezzlement in Porto Rico; that he had fled therefrom and taken refuge in New York, and that his return had been lawfully demanded by the

Governor of Porto Rico (see rendition warrant at fols. 3-4).

Kopel thereupon sued out a writ of *habeas corpus* (see writ at fol. 1). Bingham made return to the writ and set up the aforesaid rendition warrant as his authority for detaining the prisoner (see fols. 2-4). Kopel demurred to the return as insufficient in law, and that the Governor's warrant had been issued without authority, etc. (see demurrer at fols. 4-5). The matter came on at Special Term before Truax, J., who overruled the demurrer, dismissed the writ and directed the Police Commissioner to deliver Kopel to the agent of Porto Rico to be conveyed back to Porto Rico (see order of Truax, J., at fols. 5-7).

From this order Kopel appealed to the Appellate Division of the Supreme Court in the First Department. The result was that the order of Truax, J., below was unanimously affirmed (see order of affirmance at fols. 9-10). Elaborate opinions were written by the justices of the Appellate Division (see App. Div., opins. at fols. 10-21).

Kopel thereupon further appealed to the Court of Appeals from the order of the Appellate Division. The result was that the order below was affirmed, and the record was remitted to the Supreme Court, there to be proceeded upon according to law (see remittitur at fols. 24-25). A long opinion was rendered by the Court of Appeals in which all the judges concurred (see opin. Ct. App. at fols. 47-54).

Proceedings were thereupon had in the Supreme Court whereby the order of the Court of Appeals was made the order of the Supreme

Court, and whereby it was ordered that the original order of the Supreme Court, which had been affirmed, should be enforced and carried into execution and effect (fols. 26-28). This order upon the remittitur was made by McCall, J. (see fol. 28). This is the order to which the writ of error is addressed (see fol. 41); and which it is now sought to review.

The remaining papers in the record comprise the papers upon which the writ of error issued, the writ itself, &c., &c. Pending this proceeding, Kopel, the plaintiff in error, is at large upon bail.

POINT II.

The Questions Involved.

The question involved is, therefore, whether the Governor of Porto Rico had power and authority to make a requisition upon the Governor of the State of New York for the arrest and surrender of a fugitive criminal from Porto Rico who had taken refuge in the State of New York, and whether the Governor of the State of New York had power and authority to honor such a requisition and to issue his rendition warrant for the arrest and surrender of such a fugitive?

Counsel for the defendant in error contends that the extradition proceedings in this case are sustainable upon either one of two theories:

(1) Because Porto Rico is a **"territory"**

within the meaning of the interstate rendition statute, U. S. R. S. § 5278; or,

(2) Because under the Foraker act passed Apr. 12, 1900 (chap. 191, 31 Stat. L. 77) the Governor of Porto Rico is directed "at all times faithfully [to] execute the laws" and "he shall in that behalf have **all the powers** of Governors of the **territories** of the United States that are not locally inapplicable" (§ 17).

The disposition made by the Courts below may now be noted.

In the Appellate Division the first opinion written by Ingraham, J., and concurred in by McLaughlin and Laughlin, JJ., concluded that Porto Rico had become an organized territory within the meaning of U. S. R. S., § 5278 (see fols. 11-18). The second opinion, written by Patterson, P. J., and concurred in by Laughlin and Houghton, JJ., took the view that the Governor of Porto Rico was authorized by § 17 of the Foraker act, *supra* (see fols. 19-21). The opinion of the Court of Appeals proceeded upon both grounds (fols. 47-53).

The plaintiff in error had also instituted habeas corpus proceedings in the U. S. District Court for the Southern District of New York. The writ was dismissed by Hough, J., in view of the powers of the Governor of Porto Rico given by § 17 of the Foraker act above referred to.

In re Kopel, 148 Fed. R., 505.

POINT III.

The Interstate Rendition Statute.

This statute is as follows:

> "Whenever the executive authority of any state or **territory** demands any person as a fugitive from justice, of the executive authority of any state or territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any state or territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the state or territory from whence the person so charged has fled, it shall be the duty of the executive authority of the state or territory to which such person has fled, to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand or to the agent of such authority appointed to receive the fugitive and to cause the fugitive to be delivered to such agent when he shall appear. * * * "

U. S. Revised Statutes, § 5278.

The statutes of New York, which impose upon the governor the duty of carrying the above act into effect are

N. Y. Code Crim. Proc., §§ 827, *et seq.*

Moreover, it is significant that the Legislature of Porto Rico has incorporated into its Criminal Code provisions somewhat similar to the above provisions of the New York Criminal Code respecting the detention of fugitives from other

States and territories and their surrender upon requisition. These provisions provide for the surrender of fugitive criminals from Porto Rico upon the demand of the Governor of any State, and also provide for their preliminary arrest and detention to enable the demand for their surrender to be made by the Governor of the State where the crime was committed.

> See Criminal Code of Porto Rico, § 522 *et seq.* and compare same with N. Y. Crim. Code, § 827 *et seq.*

These provisions show that Porto Rico contemplated the extradition of fugitives to and from the several states directly with the state governments. But under the Foraker act Congress reserved the right to **annul or modify** any Porto Rican legislation (Foraker act, § 31). These provisions have never been annulled. Hence, it would seem that Porto Rico had legislated with regard to extradition matters upon the theory that it was a "territory" within the meaning of U. S. R. S., § 5278; and that Congress had approved of this legislation, at least negatively by not annulling or modifying it.

The provisions of the Federal Constitution relating to the surrender of criminal fugitives have reference to the *States* only (U. S. Cons., Art. IV, § 2, Subd. 2). But the act of Congress of February 12, 1793, which is substantially reproduced in U. S. R. S., § 5278 *supra*, made provision for the demand and surrender of fugitives by the Governors of the territories as well as of the States, and it is not disputed that the power to extradite fugitive criminals as between *a State*

and a territory is as complete as between one State and another.

Ex parte Reggel, 114 U. S., 642.

The power of Congress to provide for the surrender of fugitives from justice as between a State and a Territory was derived not from the extradition clause of the Constitution, but from the clause which provides that:

> "The Congress shall have power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States * * *"

U. S. Const., Art. IV, § 3, Subd. 2.
Moore on Extradition, Vol. II, § 535.

It may be conceded at the outset that if this statute (§5278 *supra*) does not apply, none other does. Obviously there is not, nor could there be, any treaty with Porto Rico for, whatever it may be, Porto Rico is not a foreign land since the cession and acceptance thereof by the Treaty of Paris. Nor does the amendment of June 6th, 1900, to Section 5270, apply, for Porto Rico is not *"foreign country or territory"* (Neely *vs.* Henkel, 180 U. S., 109), nor does §1014 of the United States Revised Statutes, which provides for the removal of persons charged with *crimes against the United States;* nor is there any special statute providing for extradition like that relating to the Philippine Islands, where the form of government established is vastly different from that established in Porto Rico.

See opin. of Hough, J., 148 Fed. R., 505.

POINT IV.

Porto Rico has been consistently described as a "territory" of the United States.

This point calls for an argument which, in the nature of things, must be desultory. Counsel does his best to compress it. As it is, the material which he presents will be, doubtless, familiar; for most of it is taken from the opinions of the Court in the Insular Tariff Cases (182 U. S.) and from the cases which have cited those opinions.

I. Porto Rico was described as a "territory" by the Treaty of Paris.

The Spanish-American War was brought to a close by the Treaty of Paris, which was proclaimed April 11th, 1899, and under the terms of which the island of Porto Rico was ceded by Spain to the United States.

> "The treaty ceding Porto Rico to the United States was ratified by the Senate February 6, 1899; Congress passed an act to carry out its obligations March 3, 1899; and the ratifications were exchanged and the treaty proclaimed April 11, 1899. Then followed the act of April 12, 1900 (31 Stat., 77, Chap. 191)."
>
> Ortega *vs.* Lara, 202 U. S., 339, 342.

Portions of the treaty are quoted by Mr. Justice White in his opinion in the Downes case (182 U. S. at pp. 339-340).

We note that in the treaty the ceded land is

repeatedly referred to as "territory." Article IX declares "The civil rights and political status of the native inhabitants of the **territories** hereby ceded to the United States shall be determined by the Congress" (see 182 U. S. at pp. 339-340).

It thus seems clear that the United States expressly received Porto Rico as a "territory."

The effect of the ratification of the treaty was to make the island **"territory** of the United States—although not an organized territory in the technical sense of the word." (Per Brown, J., in De Lima *v.* Bidwell, 182 U. S. at top of p. 196.) As will be seen the "organization" of the territory was subsequently effected by the Foraker Act.

II. Porto Rico has been described as a "territory" by government officials.

While it is true that the Foraker Act does not denominate Porto Rico a territory, it should be noted that in the general appropriation act of 1906, the appropriations for the resident commissioner from Porto Rico appear under the title of **"Territory of Porto Rico."**

> U. S. Stats. at Large, 1st sess. 59th Congress, part 1, page 417.

There appears to be also at least one instance of unqualified executive recognition. In an opinion rendered by Attorney General Knox respecting the subject of the regulation of trade marks, he said:

> "In so far as resident Porto Ricans are

concerned, laws of Congress, not locally inapplicable, have by the Act of the government of that island, and by the Revised Statutes (Sec. 1891) been extended to it. * * *

"Porto Rico has been fully organized under a law of Congress providing the details of its government, and organized for the most part, upon the plan adopted for the Territories contiguous to the States of the Union. The presumption from the whole tenor of this Organic Act is that a liberal construction of the provisions extending the laws of the United States, would comport with the design of Congress." * * *

"In addition to this, the Trade-Mark Act undoubtedly applied to the United States in the sense of the States, the organized Territories, and the District of Columbia, and not in the sense of the States united. The law was therefore broad originally and intended to apply to the Territories as well as States. **To these organized Territories, Porto Rico, similarly and completely organized, has now been added.**"

Op. Atty. Gen., Vol. 24, pp. 634, 635, 636.

III. Porto Rico has been repeatedly referred to as a "territory" in the opinions of this Court.

Reference is now had to the so-called Insular Tariff opinions, and to the opinions which have followed them.

In the **De Lima** case (182 U. S. 1) the question was whether Porto Rico was a "foreign country" within the meaning of the Dingley Act, so as to authorize the imposition of import duties. This Court held it was not and said:

"The *status* of Porto Rico was this: The island had been for some months under military occupation by the United States as a conquered country, when, by the second article of the treaty of peace between the United States and Spain, signed December 10, 1898, and ratified April 11, 1899, Spain ceded to the United States the island of Porto Rico, which has ever since remained in our possession, and has been governed and administered by us. If the case depended solely upon these facts, and the question were broadly presented whether a country which had been ceded to us, the cession accepted, possession delivered, and the island occupied and administered without interference by Spain or any other power, was a foreign country or **domestic territory,** it would seem that there could be as little hesitation in answering this question as there would be in determining the ownership of a house deeded in fee simple to a purchaser, who had accepted the deed, gone into possession, paid taxes and made improvements without let or hindrance from his vendor (at pp. 180-181).

* * * *

* * by the ratification of the treaty of Paris the island became territory of the United States—although not an organized territory in the technical sense of the word" (top of p. 196).

* * * *

We are therefore of opinion that at the time these duties were levied Porto Rico was not a foreign country within the meaning of the tariff laws but **a territory of the United States,** that the duties were illegally exacted and that the plaintiffs are entitled to recover them back" (p. 200).

De Lima *v.* Bidwell, 182 U. S. 1, per Brown, J.

The next three Insular cases substantially adopt the conclusions of the De Lima opinion (Goetze *v.* U. S., 182 U. S. 221; Crossman *v.* U. S., 182 U. S. 221; Dooley *v.* U. S., 182 U. S. 222). The Armstrong case, which comes next, simply followed the Dooley case (Armstrong *v.* U. S., 182 U. S. 243).

Then came the **Downes** case (182 U. S. 244) which determined that certain peculiar duties created by the Foraker Act as respects imports from Porto Rico were valid, notwithstanding the uniformity clause of the Constitution. Several opinions were delivered. As we understand, all of the justices, either expressly or impliedly referred to Porto Rico as "a territory" of the United States, although there was diversity of opinion as to what kind of a territory it was.

In the opinion of the court delivered by Mr. Justice Brown, it is said:—

> "In the case of DeLima *v.* Bidwell, just decided, we held that upon the ratification of the treaty of peace with Spain, Porto Rico ceased to be a foreign country, and became a **territory of the United States,** and that duties were no longer collectible upon merchandise brought from that island (at pp. 248-249)."
>
> * * * * * * * *
>
> "We are therefore of opinion that the Island of Porto Rico is **a territory appurtenant** and belonging to the United States, but not a part of the United States within the revenue clauses of the Constitution; that the Foraker act is constitutional, so far as it imposes duties upon imports from such island, and that the plaintiff can-

> not recover back the duties exacted in this case (at p. 287)."

In the long concurring opinion delivered by Justices White, Shiras and McKenna (182 N. Y., 287-344), we do not find any specific description of Porto Rico as "a territory." Porto Rico, seems, however, to be contemplated when the power of Congress to create municipal organizations for "all the territories of the United States" is referred to (at foot of p. 289). See also the phrases "in governing the territories", and "in organizing the government of a territory" (at p. 291); "the status of a particular territory" (at p. 294). See also the excerpts from the Treaty of Paris in which Porto Rico is designated as one of the "territories hereby ceded" (at pp. 339-340).

It is true, of course, that when the net result is given, these concurring justices describe Porto Rico not as a territory, but as a "possession."

> "The result of what has been said is that whilst in an international sense Porto Rico was not a foreign country, since it was subject to the sovereignty of and was owned by the United States, it was foreign to the United States in a domestic sense, because the island had not been incorporated into the United States, but was merely appurtenant thereto as a possession" (at pp. 341-342).

In his separate concurring opinion, Mr. Justice Gray refers to Porto Rico as "territory, in the broader sense," acquired by war (at p. 345).

The several dissenting justices took the ground that the act was invalid because Porto Rico had become actual domestic territory. We quote the several passages:

> "* * * I take it that the act under consideration [*i. e.*, the Foraker act] made Porto Rico, whatever its situation before, an **organized territory** of the United States" (at p. 373).
>
> * * * * * * * *
>
> "In DeLima *v.* Bidwell, just decided, we have held that upon the ratification of the treaty with Spain, Porto Rico ceased to be a foreign country and became **a domestic territory** of the United States" (at p. 385).

And in the course of his additional dissenting opinion Mr. Justice Harlan adds:

> "How Porto Rico can be **a domestic territory** of the United States, as distinctly held in De Lima *v.* Bidwell, and yet, as is now held, not embraced by the words 'throughout the United States,' is more than I can understand" (at p. 386).

He makes further reference to Porto Rico as a "territory" (at p. 389); and closes with these words:

> "In my opinion Porto Rico became, at least after the ratification of the treaty with Spain, a part of and subject to the jurisdiction of the United States in respect of all its territory and people, and Congress could not thereafter impose any duty, impost or excise with respect to that island and its inhabitants, which departed from the rule of uniformity established by the Constitution" (at p. 391).
>
> Downes *v.* Bidwell, 182 U. S., 244.

The next insular case is that of **Dooley,** 183 U. S. 151, decided Dec. 2, 1901, which held that the Foraker act was constitutional in so far as it

imposed a duty upon merchandise brought **from** the United States into Porto Rico. The opinion of the Court, delivered by Mr. Justice Brown, state that the case was "really correlative to that of *Downes* v. *Bidwell*" (top of p. 157). It then concedes the constitutional impossibility of laying such taxes upon exports from one state to another, adding:

> "There is a wide difference between the full and paramount power of Congress in legislating for **a territory** in the condition of Porto Rico and its power with respect to the States * * *" (at p. 157).

This opinion appears to have been concurred in by Justices Gray, Shiras, and McKenna.

> N. B.—Justices Gray, Shiras and McKenna had united in the concurring opinion in the Downes case *supra*, in which Porto Rico had been referred to as a "possession." It is significant to note that in this later Dooley case they concur in describing it as "a territory."

Mr. Justice White also concurred in the judgment and "in substance * * * in the opinion" (foot of p. 157) upon the authority of the DeLima, Dooley, Diamond Rings, and Downes cases (top of p. 158). He adhered to the views which he had expressed in the Downes opinion, to the effect that Porto Rico had become "subject, as a *possession*, to the legislative power of Congress" (top of p. 164). In the next paragraph, however, we find language which counsel respectfullysubmits is susceptible of the construction that Mr. Justice White regarded the Downes case as deciding that "Porto Rico had become **territory** of the United States" (although not completely incorporated);

and that this was controverted by none of the justices of the Court (see p. 164).

Dooley *v.* U. S., 183 U. S. 151.

The dissenting justices, Fuller, C. J., Harlan, Brewer and Peckham, JJ., after arguing that Congress was without power to lay the tax in question, concluded:

> "But the decision now made recognizes such powers in Congress * * *; and this notwithstanding it was held in DeLima *v.* Bidwell, 182 U. S. 1, that Porto Rico after the ratification of the treaty with Spain ceased to be foreign and became **domestic territory"** (foot of p. 175).

Dooley *v.* U. S., 183 U. S. 151.

The next case is that of the "Fourteen Diamond Rings," 183 U. S., 176, in which the status of the Philippines was passed upon. A soldier brought the rings back with him, but they were seized for no-payment of duties. The question was whether the Philippines were a "foreign country" within the meaning of the Dingley Act. As to this, the opinion said:

> "This question has already been answered in the negative, in respect of Porto Rico, in De Lima *v.* Bidwell, 182 U. S. 1, and unless the cases can be distinguished, which we are of opinion they cannot be in this particular, that decision is controlling.
>
> The Philippines, **like Porto Rico,** became by virtue of the treaty, **ceded conquered territory,** or territory ceded by way of indemnity" (at pp. 177-178).
>
> * * * * * *
>
> "They [the Philippines] came under the

> complete and absolute sovereignty and dominion of the United States, and so became **territory of the United States,** over which civil government could be established" (near foot of p. 179).

Reference is also made to the various views expressed in the Downes opinion to the effect that Porto Rico was "a territory * domestic, yet * merely appurtenant * * * though not foreign" (near foot of p. 181).

> Fourteen Diamond Rings *v.* U. S., 183 U. S. 176.

The opinion in the Diamond Rings case was written by Mr. Chief Justice Fuller, with the concurrence of Harlan, Brewer and Peckham, J.J. Mr. Justice Brown wrote a concurring opinion, but also concurred in the main opinion (at p. 182). Justices Gray, Shiras, White and McKenna dissented for the reasons given in their opinions in the De Lima, Dooley and Downes cases (at p. 185).

As for the other cases relating either directly or indirectly to Porto Rico we note that Czarnikow *v.* Bidwell, 191 U. S. 559, and Warner, Barnes & Co. *v.* Stranahan, 191 U. S. 560, were affirmed on the authority of Downes *v.* Bidwell 182 U. S. 244, without comment.

In Gonzales *v.* Williams, 192 U. S. 1, it was unanimously held that a citizen of Porto Rico was not an alien immigrant. That case will be subsequently referred to as bearing out counsel's contention that Porto Rico, as a territory is "fully organized" (*vid infra* pp. 34-35).

In the Kepner (Philippine Island) case, 195 U.

S. 100, the opinion refers to the power of Congress to legislate for **"territory** incorporated in or owned by the United States" (at foot of p. 124). Downes *v.* Bidwell is cited upon this poin (top of p. 125) and thus Porto Rico is, by necessary implication, referred to as such "territory."

In the Dorr (Philippine Island) case, 195 U. S. 138, the Insular cases are referred to as follows:

> "The recent consideration by this court and the full discussion had in the opinions delivered in the so-called "Insular cases", renders superfluous any attempt to reconsider the constitutional relation of the powers of the government to **territory** acquired by a treaty cession to the United States. *De Lima* v. *Bidwell,* 182 U. S. 1; *Downes* v. *Bidwell,* 182 U. S. 244. The opinions rendered in those cases cover every phase of the question, either legal or historical, and it would be useless to undertake to add to the elaborate consideration of the subject had therein" (at foot of p. 139).

Dorr *v.* U. S. 195 U. S. 138.

Mr. Justice Day later refers to the opinion in Downes *v.* Bidwell as sanctioning the view that the United States may have "territory" not incorporated into the United States as a body politic, and that this was the view of the framers of the Constitution (top of p. 143).

The Rasmussen (Alaska) case, 197 U. S. 516, again reiterates the doctrine of Downes *v.* Bidwell, that there may be "territory" which Congress has not seen fit to incorporate into the United States and added

> "We regard it as settled by that decision

(Downes *v.* Bidwell) that the territory is to be governed under the power existing in Congress to make laws for **such territories,** &c." (foot of p. 520).

Rasmussen *v.* U. S., 197 U. S., 516.

The opinion in the later case of Perez *v.* Fernandez, 202 U. S. 80, directly refers to **Porto Rico** as a "territory." It held that the Foraker act required the U. S. District Court for Porto Rico to adapt itself, in an attachment matter, to the local procedure and practice. Mr. Justice Day wrote:

"In view of the provisions of the Foraker Act, continuing local laws in force, this reasoning has application to the powers of the United States Court **in that territory"** (middle of p. 99).

Perez *v.* Fernandez, 202 U. S. 80.

This last case is interesting from another point of view. U. S. R. S. § 914 requires that the Federal practice at law shall conform as near as may be to the local practice of the courts of record "of the *State"* wherein the U. S. court is held. § 914 says nothing about "territories". Yet this court states that its conclusion "is in accord with the policy of the United States, evidenced in its legislation concerning the islands ceded by Spain" (at p. 97).

If U. S. R. S. § 914, which does not refer to territories, but only to states, is applicable to Porto Rico, in view of the general policy of the United States toward Porto Rico; then surely it cannot be extravagant to claim that the rendition statute U. S. R. S. § 5278, which expressly refers

to "territories" is also applicable to Porto Rico. Every argument, based upon supposed general policy applies. It is beyond belief that Porto Rico was not intended to have power to reclaim fugitives from its justice, or that it was to be erected into an asylum for fugitives from the United States.

Ortega *v.* Lara, 202 U. S., 339, is also a Porto Rican case. We find the consistent implication that Porto Rico is a "territory." The opinion speaks of the continuance of laws for the protection of private rights where political jurisdiction and legislative power over **"territory"** are transferred from one nation to another (at p. 342).

Ortega *v.* Lara, 202 U. S., 339.

In Garrozi *v.* Dastas, 204 U. S., 64, a question of Spanish law was involved. The opinion speaks of the Spanish Civil Code "which was in force in the island of Porto Rico when the **territory** was acquired" (near top of p. 75).

Garrozi *v.* Dastas, 204 U. S., 64.

In Pearcy *v.* Stranahan, 205 U. S., 257, it was insisted that the Isle of Pines was domestic territory within the Dingley act. The court following Neely *v.* Henkel, 180 U. S., 109, held that it was a foreign country within the Dingley act (at p. 265); and also declared that it was foreign country within the ruling of the court in the Porto Rican case of DeLima *v.* Bidwell, 182 U. S., 1. Mr. Chief Justice Fuller added:

"It must be treated as foreign, for this

> government has never taken, nor aimed to take, that **possession** in fact and in law which is essential to render it **domestic**" (at foot of p. 272).
>
> Pearcy *v.* Stranahan, 205 U. S., 257.

The "possession in fact and in law" thus referred to seems to be the very same possession which the DeLima case declared had made Porto Rico a "domestic territory" of the United States.

In Romeu *v.* Todd, 206 U. S., 358, it appears that the U. S. District Court for the District of Porto Rico had wrongfully disregarded a certain local law. The opinion described the court as in no sense a constitutional court of the United States, and said:

> "its authority emanates wholly from Congress under the sanction of the power possessed by that body to govern **territory** occupying the relation to the United States which **Porto Rico** does" (middle of p. 368).
>
> Romeu *v.* Todd, 206 U. S., 358.

In U. S. *v.* Heinszen & Co., 206 U. S., 370, the rulings in the Insular Tariff cases were discussed at some length (at p. 378 *et seq.*). It was stated that in the De Lima case 182 U. S., 1, it was decided that the effect of the ratification of the treaty "was to take the island of Porto Rico out of the category of **foreign territory**" within the meaning of that word in the tariff laws. (at p. 369).

U. S. *v.* Heinszen & Co., 206 U. S., 370.

In Garzot *v.* de Rubio, 209 U. S., 283, the court speaks of the fact that there is no intermediate reviewing court between the Supreme Court and the District Court of Porto Rico "differing from what is generally the case in the **territories** of the United States" (middle of p. 285).

Garzot *v.* de Rubio, 209 U. S., 283.

IV. The circumstance that the Foraker act does not describe Porto Rico as a "territory."

It is quite true that the Foraker act does not call Porto Rico a "territory" in so many words; and that is substantially the only reason that the plaintiff in error has for urging that this order should be reversed.

It is, however, apparent that Congress, in passing the Foraker act was not definitely determining the political status of the island. The title of the act indicates this. "An Act **temporarily** to provide revenues and a civil government for Porto Rico, and for other purposes" (31 Stat. L., 77).

Porto Rico has not as yet been deemed fit for statehood; and its definite designation as a territory might perhaps have been construed as an implied promise of future statehood. To quote the words of Hough, J., "Congress has with entire consistency, and for obvious political reasons, refused to describe it by that technical term" (*In re* Kopel, 148 Fed., at p. 507).

But it is equally significant to observe that Congress has never specifically declared that Porto Rico is **not** to be regarded as a territory; and, upon the contrary, has expressly vested it with

the powers of an actual territory in every essential respect. The important provisions giving the governor and the attorney general **all the powers** of like officers of "territories" (Foraker Act, §§ 17 and 21), go far to show that Congress intended Porto Rico to be a territory as far as municipal and administrative powers are concerned, even if it was to be kept in vassalage as to its future political status.

The mere fact that the Foraker act does not specifically designate Porto Rico as a "territory" would seem to be of no controlling importance for other reasons.

It is true that in the acts of Congress organizing the territories of Utah, Washington, Colorado, Dakota, Arizona, Idaho, Montana and Wyoming, each one was specifically designated as a "territory" (U. S. Rev. Stat., §§ 1839-1953). But on the other hand, the "Indian Territory," which was and is in no sense an *organized territory,* has always been referred to in acts of Congress and by the people as "The Indian Territory" (Act of March 2nd, 1899, Chap. 374, 30 Stat. L., 990 *et seq.,* 26 Stat. L., 93; Federal Statutes, Annotated, Vol. III, "Indians," p. 403 *et seq.*).

In the latest Act providing a civil government for Alaska, it is designated as a District (Act of June 6, 1900, Chap. 786, 31 Stat. L., 321), although in previous Acts of Congress it is spoken of and referred to as the "Territory of Alaska" (U. S. Rev. Stat., Sections 1954, 1955, *et seq.*). And at a recent session of Congress in the appropriation bill for the government of the territories (59th Congress, First Session, pages 416, 417) Alaska is called a "District" and **Porto Rico is**

called a "Territory," while on page 295 of the Session Laws passed by the same Congress in an appropriation for shipwrecked seamen, Alaska is called a territory. Again on page 169 in the bill providing for the election of a delegate from Alaska to the House of Representatives, the Act opens by using the language, "That the People of the Territory of Alaska shall be represented by a delegate, etc."

V.—Résumé.

According to the comprehension of counsel there is no description except that of "territory" which can be aptly given to Porto Rico. It is universally called a territory by the people who refer to it. The United States accepted it by that designation in the Treaty of Paris. Government officials have so referred to it. Even if the Insular Tariff cases have not definitely held that Porto Rico is a domestic territory of the United States, it seems quite plain that the justices of the court can find no other word than territory by which to describe it.

If it should be argued that this consistent and persistent description of Porto Rico as a "territory" does not amount to an adjudication, nevertheless it bespeaks a practical interpretation of the word by public officers, executive, legislative and judicial, who have been required to construe it. Such a practical construction by public officers is given great weight by the Courts.

Barrow-Giles, &c., Co. *v.* Sarony, 111 U. S., 53.

Field *v.* Clark, 143 U. S., 649.
Downes *v.* Bidwell, 182 U. S., 244, 286.

Counsel submits that there is another suggestion which is entitled to consideration. It is true that in organizing Porto Rico, by the Foraker act, Congress refrained from denominating it a territory. But did that make it any the less a territory in fact? No doubt Porto Rico was acquired by the United States by virtue of the treaty-making or war-power provisions of the Constitution. But the Foraker act, by which the island was organized, depends for its validity upon the power vested in Congress by the territorial clause of the Constitution, which reads:

> "The Congress shall have power to dispose of and make all needful rules and regulations respecting the **territory** or other property of the United States * * *."
>
> U. S. Cons., Art IV, sect. 3.

Surely the power of Congress cannot rise higher than its source. The Foraker act is without foundation unless Porto Rico is either "the territory or other property of the United States." The words "other property" manifestly contemplate personal property, as contrasted with real property; and the word "territory" is thus obviously used as the equivalent of real property, or outlying domain, such as is Porto Rico.

Counsel, therefore respectfully submits, in conclusion that Porto Rico must be regarded as a territory of the United States.

But before Porto Rico could claim to be such a

territory as is contemplated by the rendition statute U. S. R. S., § 5278, it must appear that it is properly "organized." The next point will be devoted to a discussion of the matters which show that Porto Rico is abundantly organized.

POINT V.

Porto Rico is an "organized" territory of the United States.

Under the Lane case, 135 U. S., 443, it seems to have been held that when the word "Territories" is used by Congress in a statute reference is had exclusively to that system of organized government long existing within the United States, by which certain regions of the country have been erected into civil governments."

If Porto Rico is properly described as a "territory" at all, an examination of the Foraker act shows that it was fully organized.

The expressed purpose of the Foraker act (chap. 191, stat. L 77) is, among other things to provide "a civil government for Porto Rico."

The opening sections, which provide for a certain tariff between Porto Rico and the United States, show, in terms, that it was the purpose of the act to "organize" the "territory" which had been ceded by the Treaty of Paris. Thus it is provided that until the government "shall have been **organized**" all the duties shall be paid into the U. S. treasury to be held as a separate

fund; but that as soon as a civil government "shall have been **organized**" these duties shall be paid into the treasury of Porto Rico (§ 4).

We now discuss the remaining sections which make it clear that a highly organized government was erected by the Foraker act.

In section 7 the act declared that certain individuals should be deemed "citizens of Porto Rico," &c., and declared that they, together with such citizens of the United States as may reside in Porto Rico

> "shall constitute a body politic under the name of The People of Porto Rico, with **governmental powers** as hereinafter conferred, and with power to sue and be sued as such."
>
> Foraker Act, § 7.

Provision was made for a Governor to hold office for four years, &c., with power to grant pardons, &c., appoint officers, veto legislation, command the militia and execute the laws; and it was further declared that

> "He shall in that behalf have all the powers of governors of the **Territories** of the United States that are not locally inapplicable."
>
> Foraker Act, § 17.
>
> N. B.—It is argued elsewhere that this provision of § 17 which gives the Governor "all the powers of governors of the **Territories**," &c., in itself, justifies the extradition proceedings in this case.

An executive council was created, to be appointed by the President, consisting of a secre-

tary, an attorney-general, a treasurer, and other officers, and their duties were provided for.

Foraker Act, §§ 18-26.

It is worthy of note, in this connection, that the attorney-general was to have **all the powers** "provided by law for an attorney of a **Territory** of the United States, in so far as the same are not locally inapplicable." (§ 21.) The attorney-general was thus put upon the same plane as the governor who had also been given all the powers of governors of Territories (*vid, supra*).

Legislative powers were granted. There was to be a legislative assembly of two houses, one the executive council, above referred to, and the other a house of thirty-five delegates to be elected by the voters.

Foraker Act, §§ 27-31.

Certain existing laws and ordinances of Porto Rico were continued (§ 8); the statutory laws of the United States, not locally inapplicable (except the Internal Revenue Laws) were declared to have force and effect (§ 14). It was provided that all laws enacted by the legislative assembly might be annulled by Congress (§§ 31, 32).

A complete system of courts was created (§§ 33, 34); and provision for appeal to the Supreme Court of the United States was made

> "in the same manner and under the same regulations and in the same cases as from the Supreme Courts of the **Territories** of the United States."

Foraker Act, § 35.

The foregoing is but a brief summary of the provisions of the Foraker act. True, it nowhere specifically describes Porto Rico as a territory. It would seem, however, apparent that Congress intended to erect a government teritorial in substance, and upon the same general lines upon which the older acknowledged territories were organized.

> See for these various older acts U. S. R. S., §§ 1839-1953.

The completeness of this organization was pointed out by Hough, J., in an earlier case in which Kopel, this plaintiff in error, sought a discharge in the U. S. District Court (148 Fed. R., 505). It is quite true that Hough, J., concluded that Porto Rico was not a "territory" within the meaning of the rendition statute, U. S. R. S., § 5278; but his own words seem to destroy his conclusion. He wrote:

> "Porto Rico has thus far been consistently kept in a condition of vassalage; it is neither a territory in esse nor a state in posse. Yet the various statutes relating to this island have conferred upon its inhabitants a government with **all the powers and all the privileges of a technical territorial government**; from the privileges of national citizenship only have the inhabitants of the island been debarred. Inasmuch as the federal Constitution does not apply to territorial acquisitions of the United States, except as extended thereto by act of Congress, it is obviously within the power of the nation to organize "territory of the United States" into any sort or kind of "territory" that Congress may desire.
>
> In Porto Rico the act of April 12, 1900

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(chapter 191, 31 Stat. 77), and its amendments, have provided the substance of a territorial government. The executive, legislative, and judicial governmental departments are established upon lines familiar to every student of American Constitutions. An elective commissioner, who substantially answers to a territorial delegate, represents the island at Washington, Section 39. It is entitled to a cadet at the Military Academy * * * a midshipman at the Naval Academy * * * and the citizens of Porto Rico are sufficiently near of kin to the citizens of the United States to enlist in the national service. * * *

Considering, therefore, what appears to me the obvious congressional intent of erecting in Porto Rico a government **territorial in substance,** but for political reasons called by a different name, the real inquiry to be made in this litigation is not the political status of the island, but the powers conferred upon the executive thereof with respect to the statutes of the United States now under consideration."

In re Kopel, 148 Fed. R., 505, 507.

Porto Rico, as now organized, surely answers the description of an organized territory, according to all the definitions announced by the courts.

In National Bank *vs.* County of Yankton, "territories" were defined as follows:

"All territory within the jurisdiction of the United States not included in any State must necessarily be governed by or under the authority of Congress. **The Territories are but political subdivisions of the outlying dominion of the United States.** Their relation to the general government is much the same as that which counties bear to the respective States,

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> and Congress may legislate for them as a State does for its municipal organizations. The organic law of a Territory takes the place of a constitution as the fundamental law of the local government."
>
> National Bank *vs.* County of Yankton, 101 U. S., 129, 133.

In *Ex parte* Morgan, 20 Fed. Rep., 298, 305, a "territory" within the meaning of the Rendition Statute was defined as:

> "A portion of the country not included within the limits of any State, and not yet admitted as a State into the Union, but organized under the laws of Congress with a separate legislature under a territorial Governor and other officers appointed by the President and Senate of the United States."
>
> *Ex parte* Morgan, 20 Fed. Rep., 298, 305.

In that case the question involved was the right of the Governor of Arkansas to honor a requisition for the surrender of a fugitive criminal received from the principal Chief of the Cherokee Nation, and the Court in holding that the Governor was not authorized to honor such a requisition, for the reason that the Chief of the Cherokee nation was not the executive authority of any "state" or "territory," inasmuch as the Cherokee nation or Indian Territory *was not an organized government with an executive, legislative and judicial system of its own,* but was exclusively under the jurisdiction of the United States. The Court defined a territory within the meaning of the extradition statute as we have above quoted, and it will be found by an examination of the Foraker Act, the organic law of Porto Rico, that Porto

Rico falls squarely within the definition therein enunciated.

Ex parte Morgan, *supra.*

In *In re Lane,* 135 U. S. 443, the prisoner had committed a crime in Oklahoma. He was tried and convicted upon an indictment, found under an Act of Congress, which exempted from its operation *"Territories";* and it was claimed that Oklahoma,* which was then a part of the Indian Territory, was a Territory and came within the exemption of the Act, but the Court defined what constituted a *"Territory,"* saying:

> "But we think the words 'except the territories' have reference exclusively to that system of *organized government,* long existing within the United States, *by which certain regions of the country have been erected into civil governments. These governments have an executive, a legislative, and a judicial system.* They have the powers which all these departments of government have exercised, which are conferred upon them by act of Congress, and their legislative acts are subject to the disapproval of the Congress of the United States. They are not in any sense independent governments; they have no Senators in Congress and no representatives in the lower house of that body, except what are called delegates, with limited functions. **Yet they exercise nearly all the powers of government, under what are generally called organic acts passed by Congress conferring such powers on them. It is this class of governments, long known by the name of Territo-**

*Oklahoma was afterwards made an organized "Territory." Act of May 2, 1900; 26 Stat. L. 81; and has since become a State.

ries, that the act of Congress excepts from the operation of this statute, while it extends it to all other places over which the United States have exclusive jurisdiction.

Oklahoma was not of this class of Territories. It had no legislative body. It had no government. It had no established or organized system of government for the control of the people within its limits, as the Territories of the United States have and have always had. We are therefore of opinion that the objection taken on this point by the counsel for prisoner is unsound."

In re Lane, 135 U. S., 443, 447, 448.

In Vol. 28 of the Amer. and Eng. Encyclopedia of Law Territories are defined as follows:

"Territories are *political sub-divisions* of the *outlying dominion* of the United States. They are outlying provinces of the national government, subject to its direct control through Congressional legislation or its indirect control through Congressional supervision of territorial legislation."

Am. & Eng. Enc. of Law (2nd Ed.)
Vol. 28, page 57, and cases cited.

A recent decision of this Court refers to the completeness of Porto Rico's organization. A woman from Porto Rico, named Gonzalez, was prevented from landing at the port of New York as being an "alien immigrant"; but the Court unanimously held that a citizen of Porto Rico was not an alien immigrant. The opinion was written by Mr. Chief Justice Fuller. Among other things, he quoted an opinion of the Attorney General relating to a Porto Rican named Molinas:

"He [*i. e.*, Molinas] is also clearly a Porto

> Rican; that is to say, a permanent inhabitant of that island, which was also turned over by Spain to the United States. As his country became a domestic country and ceased to be a foreign country within the meaning of the tariff act above referred to, and has now been **fully organized** as a country of the United States by the Foraker act, it seems to me that he has become an American, notwithstanding such supposed omission."
>
> Gonzales *v.* Williams, 192 U. S., at p. 15.

We refer here to the opinion of Attorney General Knox, already quoted, in which he referred to Porto Rico as "similarly and completely organized" as were the other organized territories (*vid., supra,* pp. 10-11).

If counsel correctly understands the meaning of the word "organized," as used in connection with territories, it simply means that the inhabitants of any given locality have been given full measure of home rule in all affairs which are essentially municipal and domestic, subject, of course, to the paramount power of Congress under the territorial clause of the Constitution. Porto Rico has not only been given all this, but more than this. This Court, in one of its most recent utterances, has spoken of the "scrupulous regard" which Congress showed for Porto Rico's local institutions and laws, when it enacted the Foraker act which went far to preserve them.

Garzot *v.* de Rubio, 209 U. S., 283.

In view of all that has been written, counsel ventures to assert that Porto Rico, in the very nature

of things is a "territory"; that it is completely "organized"; that the rendition statute U. S. R. S., § 5278 expressly comprises such territories, and that there is no reason why Porto Rico should not be held to be such a territory, and every reason in justice and policy why it should be held to fall within that description.

POINT VI.

Even if Porto Rico is not technically a "territory," yet the Foraker Act, Secs. 14 and 17, justify Kopel's extradition.

Section 14 of the Foraker Act makes the statutory laws of the United States (not locally inapplicable) of force in Porto Rico. Section 17 gives the governor all the powers of governors of the territories of the United States.

Upon the strength of these two provisions the validity of these proceedings can be abundantly sustained. The transcript of the Record shows that the Courts below both reposed their judgments upon these sections.

App. Div., opinion at fols. 19-21.
Ct. App. opinion, at fols. 52-53.

The reasoning to establish this contention is admirably stated by Hough, J., upon Kopel's former application for discharge. After concluding that

Porto Rico was not a "territory" within the rendition statute U. S. R. S., § 5278, he proceeded:

> "* * * the real inquiry to be made in this litigation is not the political status of the island, but the powers conferred upon the executive thereof with respect to the statutes of the United States now under examination.
>
> Section 14 of the organic act of April 12, 1900 (chapter 191, 31 Stat., 80), provides:
>
> > "That the statutory laws of the United States not locally inapplicable shall have the same force and effect in Porto Rico as in the United States."
>
> Section 17 (31 Stat., 81) thereof requires:
>
> > "That the Governor of Porto Rico [who has issued the requisition herein] shall at all times faithfully execute the laws, and he shall in that behalf have **all the powers** of Governors of the **territories** of the United States that are not locally inapplicable."

It has not been asserted that section 5278 Rev. St. is locally inapplicable to Porto Rico. To allege that the only existing law under which a Porto Rican fugitive from justice can be returned thereto from the United States is 'locally inapplicable' would be making a jest of justice. If the Governor of Porto Rico has under its organic act the power of a territorial Governor under the laws of the United States not locally inapplicable to Porto Rico, then he must have the power to issue a requisition for the return of a fugitive criminal as fully as a territorial Governor would have that power. The only power so to do is found in section 5278, and, that statute not being locally inapplicable to the island, it is my opinion that the requisition in question was lawfully issued, and if it was so lawfully issued, it follows that it was lawfully obeyed.

To me the passage of the act of February 9, 1903, *supra*, regarding the Philippine Islands,

> is strong confirmation of this view. An examination of the statutes establishing government in the Philippines reveals no such formation of a government territorial in substance as I find in the legislation regarding the Porto Rico. It was considered necessary to declare that for the sole purpose of extradition the Philippine Islands should be "deemed a territory." It was not necessary to make a similar declaration in respect of Porto Rico, for the Governor of that island had already been given substantially the powers "of governors of the **territories** of the United States," and such powers include the right which has been questioned in this proceeding."
>
> *In re* Kopel, 148 Fed., 505, 508.

The opinion of the Court of Appeals spoke of this reasoning of Hough, J., as "sound and convincing" (see Trans. of Record at fol. 53).

POINT VII.

The opposing brief considered.

The whole design of this brief is to meet the argument of opposing counsel. Two or three matters, however, call for special comment.

(1) Counsel cites various authorities which state that a territory is a government organized in the expectation that it or some part of it "will ultimately be admitted into the Union as a state"(foot of p. 7); an "inchoate state" (top of p. 9); that

the residents of territories are citizens, &c., &c. (at p. 9).

It is enough to say that these expressions were uttered before the United States undertook the annexation of alien peoples. It is clear that Congress has power to say what people shall or shall not be erected into territories, and to erect a territory without promising statehood.

(2) Counsel argues that Porto Rico cannot be a territory because it is "modeled on the plan of a British crown possession" (foot of p. 9).

He is evidently not aware that this Court, in one of the Porto Rican cases, in describing the organized territories, has said:

> "Congress did not hesitate, in the original organization of the territories of Louisiana, Florida, the Northwest Territory, and its subdivisions of Ohio, Indiana, Michigan, Illinois and Wisconsin, and still more recently in the case of Alaska, to establish a form of government bearing a much greater analogy to a *British crown colony* than a republican State of America, and to vest the legislative power either in a governor and council, or a governor and judges, to be appointed by the President. It was not until they had attained a certain population that power was given them to organize a legislature by vote of the people."
>
> Downes *v.* Bidwell, 182 U. S., at p. 279.

(3) Counsel argues that the Foraker act, the Pure Food Bill, and the Immigration Bill of 1906 indicate that Porto Rico was not intended by Congress to be a territory (at pp. 10-11).

The answer to this seems simple. As one star differeth from another star in glory, so one territory differeth from another territory, in the nature of its organization. Each is given just such an organization as seems wise to Congress. We have already discussed several of the acts of Congress which show that Congress has used the word territory loosely, to say the least (*vid, supra,* pp. 24-25).

(4) Counsel argues that § 17 of the Foraker act, which gives the Governor of Porto Rico all the powers of governors of the territories, &c., does not give him power to make requisitions for fugitives. He claims that such provisions are "locally inapplicable" (see Brief at pp. 14, 15).

We submit that this reasoning is not convincing; and that it is abundantly met by the opinion of Hough, J., *in Re* Kopel, 148 Fed., 505, which we have quoted *in extenso* (*vid, supra,* pp. 37-38).

(5) Counsel argues that Kopel should have been and could have been extradited under U. S. R. S. §5270, as amended (see Brief at pp. 15-18).

But §5270 is obviously inapplicable.

That section applies to foreign countries such as Cuba (Neely *v.* Henkel, 180 U. S. 109) and the Isle of Pines (Pearcy *v.* Stranahan, 205 U. S. 257).

It has been definitely decided that Porto Rico is neither foreign country nor foreign territory (De Lima *v.* Bidwell, 182 U. S. 1; Downes *v.* Bidwell, 182 U. S. 244). There are further comments to the same effect in later opinions which discuss the De Lima and Downes opinions (see

Fourteen Diamond Rings, 183 U. S., at p. 181; U. S. *v.* Heinszen & Co., 206 U. S., at p. 379).

As §5270 is inapplicable by its very terms, the argument that it is controlling falls to the ground.

Conclusion.

Counsel has no desire to burden the Court with general arguments involving mere questions of policy or expediency. He therefore concludes his brief with a resumé of the contentions which he trusts have been established.

(1.) That the word "territory" in U. S. R. S. §5278 comprehends all territories which are organized in fact.

(2.) That Porto Rico is an organized territory in the full sense of the word and is necessarily contemplated by U. S. R. S. §5278.

(3.) That, in any event, the powers given to the governor of Porto Rico by §17 of the Foraker Act show that Congress expressly intended that Porto Rico, by virtue of these powers, should have the right to demand the extradition of fugitives under §5278.

The plaintiff in error cannot claim that these contentions are obnoxious to sound policy, or would work any injustice if sustained. All that can be said is that in the confessedly *temporary* Foraker Act Congress failed to name Porto Rico as a "territory." It is generally understood that this omission was due to political reasons. Con-

gress, however, evinced the intention of giving a complete municipal organization to the island. The power to extradite under §5278 is purely administrative and is without political aspect. Granting that Congress did not care to declare Porto Rico a territory; it is significant that it has not declared that it is not a territory. Even if the precise wording of the Foraker Act was determined by political considerations; there is no reason why Congress should be deemed to have intended to deny to Porto Rico the possession of the purely administrative power of reclaiming its fugitives from justice. There is nothing magical about the word "territory" as used in the territorial clause of the Constitution; or as used in §5278. By common interpretation Porto Rico answers that description. The only qualification of the broad meaning of the word "territory" is that made by the adjudicated cases which hold that the word territory contemplates "organized" territory. As it is, by all the authorities, Porto Rico abundantly answers the description of "organized territory."

It is not necessary to enlarge upon the shocking results which would follow if it were held that Porto Rico was not a territory within the rendition statute. As Hough, J., points out, §5278 is the only "existing law" under which extradition can be had with Porto Rico. As he happily said:

> "To allege that the only existing law under which a Porto Rican fugitive from justice can be returned thereto from the United States is 'locally inapplicable' would be making a **jest of justice.**"
>
> In *re* Kopel, 148 Fed., 505.

The order below should be, in all respects, affirmed.

Respectfully submitted,
ROBERT C. TAYLOR,
Of Counsel for Defendant in Error.

ROBERT S. JOHNSTONE.

PEOPLE OF THE STATE OF NEW YORK *ex rel.* KOPEL *v.* BINGHAM, POLICE COMMISSIONER OF THE CITY OF NEW YORK.

ERROR TO THE SUPREME COURT OF THE STATE OF NEW YORK.

No. 167. Argued October 26, 1908.—Decided January 4, 1909.

Under § 17 of the act of April 12, 1900, c. 191, 31 Stat. 77, 81, the governor of Porto Rico has the same power that the governor of any organized Territory has to issue requisitions for the return of fugitive criminals under § 5278, Rev. Stat.

While subd. 2, § 2, Art. IV, Const. U. S., refers in terms only to the States, Congress, by the act of February 12, 1793, c. 7, 1 Stat. 302, now § 5278, Rev. Stat., has provided for the demand and surrender of fugitive criminals by governors of Territories as well as of States, and the power to do so is as complete with Territories as with States. *Ex parte Reggel*, 114 U. S. 642.

Section 5278, Rev. Stat., will not be construed so as to make territory of the United States an asylum for criminals, and that section is not locally inapplicable to Porto Rico within the meaning of § 14 of the act of April 12, 1900, c. 191, 31 Stat. 77, 80.

Porto Rico, although not a Territory incorporated into the United States, is a completely organized Territory.

189 N. Y. 124, affirmed.

THE facts are stated in the opinion.

Mr. Alfred R. Page for plaintiff in error:

Extradition between States, Territories and countries subject to the jurisdiction of the United States depends solely on the provisions of the Constitution of the United States and the acts of Congress. There is no reserve power in the State to surrender a fugitive as a matter of favor or comity. *Corkran* v. *Hyatt*, 172 N. Y. 183; *S. C.*, aff'd, 188 U. S. 691.

This case does not come within any of the four provisions of law for extradition between Porto Rico and the State of New York.

There are four distinct provisions of law authorizing extradition of an alleged fugitive from justice, none of which applies to this case.

1. Extradition between States upon the demand of the governor of one State upon the governor of another. Const. U. S., Art. IV, § 2.

2. Extradition between States and Territories of the United States upon the demand of the governor. Rev. Stat., §§ 5278, 5279.

3. Extradition between foreign countries or Territories occupied by or under the control of the United States and other parts of the United States, on demand of the chief executive officer upon the Secretary of State of the United States. Rev. Stat., § 5270, as amended June 6, 1900.

4. Extradition between States, Territories and Districts or insular possessions under special statutes. Dist. of Col., Rev. Stat. D. C., § 843; Indian Territory, Act of Congress, May 2, 1890, Rev. Stat., § 14; Philippine Islands, c. 529, Laws of U. S., 1903; c. 454, Laws of U. S., 1905; Alaska (when same was a District), c. 429, Laws 1899.

To these might be added the right of removal of a person charged with an offense against the laws of the United States when indicted in the United States court from the District in which he was apprehended to the District in which he was indicted. Rev. Stat., § 1014.

This case does not come within the provisions of the Con-

stitution, because Porto Rico is not a State. Nor under § 5270, Rev. Stat., as the proceedings were not had through the Secretary of State; nor is there any special statute providing for extradition for Porto Rico; the proceedings in this case were had under §§ 5278 and 5279, which do not apply, as Porto Rico is not a Territory of the United States.

The word "territory" as used in § 5278, Rev. Stat., does not mean "The entire domain over which a sovereign state exercises jurisdiction as by right of sovereignty; as within United States territory," but it means "a division of the national domain of the United States that by Act of Congress has been organized under a separate government in the expectation that it or some part thereof will ultimately be admitted into the Union as a State; as Arizona is a territory." Standard Dictionary; *Ex parte Lane*, 135 U. S. 443, 447; *Ex parte Morgan*, 20 Fed. Rep. 304; *Thompson* v. *Utah*, 170 U. S. 343, 346, and cases cited.

Porto Rico possesses none of the attributes necessary to constitute a Territory. A resident of Porto Rico is not and cannot become a citizen of the United States, and his children, even though born after the island was acquired, do not become citizens of the United States.

That Porto Rico is not a Territory, is recognized by the organic act, 31 Stat. 77. Provisions in that statute would be unnecessary if Porto Rico was a Territory of the United States.

The acts of Congress relating to extradition cannot be extended by construction to apply to places other than those specified in the acts themselves.

In addition to States and Territories, it is a well-recognized fact that there exists territory occupied by and under the jurisdiction of the United States, which is not covered by either the designation of a State or Territory. *Downes* v. *Bidwell*, 182 U. S. 244; *Hawaii* v. *Mankichi*, 190 U. S. 197; *Dorr* v. *United States*, 195 U. S. 138.

Sections 5278 and 5279 are not applicable to Porto Rico, because it is neither a State nor a Territory of the United States,

nd hence by the terms of the statute itself are made inappli-
able and are therefore "locally inapplicable."

Mr. Robert C. Taylor, with whom *Mr. Robert S. Johnstone* as on the brief, for defendant in error:

The word "territory" in § 5278, Rev. Stat., comprehends all erritories which are organized in fact.

Porto Rico is an organized Territory in the full sense of the ord and is necessarily contemplated by § 5278, Rev. Stat. *x parte Lane*, 135 U. S. 443; Foraker Act (chap. 191, 31 Stat. 7); *In re Kopel*, 148 Fed. Rep. 505, 507; *National Bank* v. *ounty of Yankton*, 101 U. S. 129, 133; *Ex parte Morgan*, 20 ed. Rep. 298, 305; 28 Am. & Eng. Enc. of Law (2d ed.), 57, nd cases cited; *Gonzales* v. *Williams*, 192 U. S. 15; *Garzot* v. *e Rubio*, 209 U. S. 283.

In any event, the powers given to the governor of Porto ico by § 17 of the Foraker Act show that Congress expressly ntended that Porto Rico, by virtue of these powers, should ave the right to demand the extradition of fugitives under 5278. *People ex rel. Kopel* v. *Bingham*, 189 N. Y. 124; . *C.*, aff'g, 117 App. Div. 411; *In re Kopel*, 148 Fed. Rep. 505, 08.

Mr. Chief Justice Fuller delivered the opinion of the ourt.

September 11, 1906, Kopel was taken into custody by de-ndant in error Bingham, who is the police commissioner of ne city of New York. The arrest was made in pursuance of rendition warrant issued by the governor of the State of lew York, which recited that Kopel was charged with hav-ng committed embezzlement in Porto Rico; that he had fled nerefrom and taken refuge in New York, and that his return ad been lawfully demanded by the governor of Porto Rico.

Kopel thereupon sued out a writ of *habeas corpus* from the upreme Court of the State of New York. Bingham made

return to the writ, and set up the rendition warrant as his authority for detaining the prisoner. Kopel demurred to the return as insufficient in law, and that the governor's warrant had been issued without authority, etc. The matter coming on at special term before Truax, J., the demurrer was overruled and the writ dismissed, and the police commissioner directed to deliver Kopel to the agent of Porto Rico, to be conveyed back to Porto Rico.

From this order Kopel appealed to the Appellate Division of the Supreme Court in the First Department, and the order of Judge Truax was unanimously affirmed.

Kopel then appealed to the Court of Appeals, which affirmed the order below. The record was remitted to the Supreme Court, to be proceeded upon according to law, and thereupon the order of the Court of Appeals was made the order of the Supreme Court, whereby it was ordered that the original order of the Supreme Court which had been affirmed should be enforced and carried into execution and effect. To this order upon the remittitur this writ of error is addressed.

The questions involved are whether the governor of Porto Rico had power and authority to make a requisition upon the governor of the State of New York for the arrest and surrender of the fugitive criminal of Porto Rico who had taken refuge in the State of New York, and whether the governor of the State of New York had power and authority to honor such requisition and to issue his rendition warrant for the arrest and surrender of such fugitive.

Section 5278 of the Revised Statutes reads as follows:

"Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony or other crimes, certified as authentic by the governor or chief magistrate of the State or Territory from whence the

person so charged has fled, it shall be the duty of the executive authority of the State or Territory to which such person has fled to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the fugitive and to cause the fugitive to be delivered to such agent when he shall appear. . . ."

By § 827 of the Code of Criminal Procedure of New York it is provided:

"It shall be the duty of the governor, in all cases where by virtue of a requisition made upon him by the governor of another State or Territory, any citizen, inhabitant or temporary resident of this State is to be arrested as a fugitive from justice . . . to issue and transmit a warrant for such purpose to the sheriff of the proper county . . . (except in the city and county of New York, where such warrant shall only be issued to the superintendent or any inspector of police). . . . Before any officer to whom such warrant shall be directed or intrusted shall deliver the person arrested into the custody of the agent or agents named in the warrant of the governor of this State, such officer must, unless the same be waived, as hereinafter stated, take the prisoner or prisoners before a judge of the Supreme Court or a county judge, who shall, in open court, if in session, otherwise at chambers, inform the prisoner or prisoners of the cause of his or their arrest, . . ." and that he or they may have a writ of *habeas corpus* upon filing an affidavit to the effect that he or they are not the person or persons mentioned in said requisition.

By § 14 of the Organic Act of Porto Rico, commonly called the Foraker Act, it is provided that "the statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Porto Rico as in the United States, except the internal revenue laws," etc. 31 Stat. 80, chap. 191.

Section 17 provides that the governor "shall at all times faithfully execute the laws, and he shall in that behalf have

all the powers of governors of the Territories of the United States that are not locally inapplicable."

Among the powers of governors of Territories of the United States is the authority to demand the rendition of fugitives from justice under § 5278 of the Revised Statutes, and we concur with the courts below in the conclusion that the governor of Porto Rico has precisely the same power as that possessed by the governor of any organized Territory to issue a requisition for the return of a fugitive criminal. *People &c. ex rel. Kopel* v. *Bingham, Police Commissioner*, 189 N. Y., 124; *S. C.*, 117 App. Div. 411. It was so held by Judge Hough, of the District Court of the United States for the Southern District of New York, in passing upon a similar application by this same relator. *In re Kopel*, 148 Fed. Rep. 505.

Subdivision 2 of § 2 of Art. IV of the Federal Constitution refers in terms to the States only, but the act of Congress of February 12, 1793, carried forward into § 5278 of the Revised Statutes, made provision for the demand and surrender of fugitives by the governors of the Territories as well as of the States, and it was long ago held that the power to extradite fugitive criminals as between State and Territory is as complete as between one State and another. *Ex parte Reggel*, 114 U. S. 642, 650. If § 5278 does not apply, no other statute does. And as to §§ 14 and 17 of the Foraker Act, no contention is made that they are locally inapplicable, except as it is argued that § 5278 of the Revised Statutes is not applicable at all, because Porto Rico is not a "Territory," as that word is used therein. We quite agree with Judge Hough that "to allege that the only existing law under which a Porto Rican fugitive from justice can be returned thereto from the United States is 'locally inapplicable' would be to make a jest of justice."

It is impossible to hold that Porto Rico was not intended to have power to reclaim fugitives from its justice, and that it was intended to be created an asylum for fugitives from the United States.

In the case of *Ex parte Morgan*, 20 Fed. Rep. 298, 305, the

question involved was the right of the governor of Arkansas to honor a requisition for the surrender of a fugitive criminal received from the principal chief of the Cherokee Nation, and the court, in holding that the governor was not authorized to honor such a requisition, for the reason that the chief of the Cherokee Nation was not the executive authority of any "State" or "Territory," inasmuch as the Cherokee Nation or Indian Territory was not an organized government, with an executive, legislative and judicial system of its own, but was exclusively under the jurisdiction of the United States, defined a Territory within the meaning of the extradition statute as follows:

"A portion of the country not included within the limits of any State, and not yet admitted as a State into the Union, but organized under the laws of Congress with a separate legislature under a territorial governor and other officers appointed by the President and Senate of the United States."

In the case of *In re Lane*, 135 U. S. 443, the accused was charged with the commission of an offense "within that part of the Indian Territory commonly known as Oklahoma." He was tried and convicted upon an indictment, found under an act of Congress, which excepted the "Territories" from its operation; and it was claimed that Oklahoma, which was then a part of the Indian Territory, was a Territory and came within the exemption of the act. But the court, Miller, J., said:

"But we think the words 'except the territories' have reference exclusively to that system of organized government, long existing within the United States, by which certain regions of the country have been erected into civil governments. These governments have an executive, a legislative and a judicial system. They have the powers which all these departments of government have exercised, which are conferred upon them by act of Congress, and their legislative acts are subject to the disapproval of the Congress of the United States. They are not in any sense independent governments; they have no Senators in Congress and no Representatives in the lower

house of that body, except what are called Delegates, with limited functions. Yet they exercise nearly all the powers of government, under what are generally called organic acts passed by Congress conferring such powers on them. It is this class of governments, long known by the name of Territories, that the act of Congress excepts from the operation of this statute, while it extends it to all other places over which the United States have exclusive jurisdiction.

"Oklahoma was not of this class of Territories. It had no legislative body. It had no government. It had no established or organized system of government for the control of the people within its limits, as the Territories of the United States have and have always had. We are therefore of opinion that the objection taken on this point by the counsel for prisoner is unsound."

Oklahoma was given a territorial government by the act of May 2, 1890, 26 Stat. 81, §§ 1 to 100, chap. 182.

In *Gonzales* v. *Williams*, 192 U. S. 15, the court unanimously held that a citizen of Porto Rico was not an alien immigrant, and among other things an opinion of Attorney General Knox, relating to a Porto Rican named Molinas, was quoted from as follows:

"He [*i. e.*, Molinas] is also clearly a Porto Rican; that is to say, a permanent inhabitant of that island, which was also turned over by Spain to the United States. As his country became a domestic country and ceased to be a foreign country within the meaning of the tariff act above referred to, and has now been fully organized as a country of the United States by the Foraker act, it seems to me that he has become an American, notwithstanding such supposed omission."

It may be justly asserted that Porto Rico is a completely organized Territory, although not a Territory incorporated into the United States, and that there is no reason why Porto Rico should not be held to be such a Territory as is comprised in § 5278.

Order affirmed.